

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1030

THE UNITED STATES OF AMERICA, APPELLANT

vs.

SCOPHONY CORPORATION OF AMERICA, GENERAL
PRECISION EQUIPMENT CORPORATION, TELEVI-
SION PRODUCTIONS, INC., PARAMOUNT PICTURES,
INC., SCOPHONY LIMITED, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

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In the District Court of the United States for the Southern
District of New York

Civil Action No. 34-184

UNITED STATES OF AMERICA, PLAINTIFF

SCOPHONY CORPORATION OF AMERICA, SCOPHONY LIMITED, ET AL.,
DEFENDANTS

Praecipe for transcript of record

Filed Jan. 27, 1947

*To the Clerk of the United States District Court for the Southern
District of New York:*

You are hereby requested to make a transcript of record to be
filed in the Supreme Court of the United States pursuant to an
appeal allowed in the above-entitled cause and to include in such
transcript the following papers and exhibits:

1. Government's Complaint.
2. Marshall's Return of Service on Arthur Levey, Director, for
Scophony Limited on December 20, 1945.
3. Notice of Special Appearance filed by counsel for Scophony
Limited.
4. Marshall's Return of Service on William George Elcock,
Financial Controller and Director, for Scophony Limited on April
5, 1946.
5. Motion to Dismiss Government's Complaint as to defendant
Scophony Limited dated May 10, 1945.
6. Deposition of William George Elcock, including all exhibits,
filed on May 15, 1946.
7. Affidavit in Support of said Motion to Dismiss.
8. Affidavit in Opposition to said Motion to Dismiss.
9. Opinion of Judge Edward A. Conger dated October 30,
1946.
- 3 10. Proposed Final Order submitted by the Government.
11. Final Order signed by Judge Edward A. Conger filed
on November 8, 1946.
12. Petition for Appeal.
13. Order Allowing Appeal.
14. Citation.
15. Statement required by Supreme Court Rule 12 (2).
16. Assignment of Errors and Prayer for Reversal.
17. Statement as to Jurisdiction.

18. Proof of Service.

19. This Praecept and service thereof.

Said transcript is to be prepared as required by law and the Rules of this Court and the Rules of the Supreme Court of the United States, and is to be filed in the office of the Clerk of the Supreme Court.

Dated January 27, 1947.

J. C. Wilson,

JAMES C. WILSON,

*Attorney for Plaintiff-Appellant,
Special Assistant to the Attorney General.*

Service of the above Praecept is accepted and copy thereof received this 27th day of January 1947.

Edwin Foster Blair,

EDWIN FOSTER BLAIR,

Attorney for Defendant Scophony Limited.

Simpson, Thacher & Bartlett,

SIMPSON, THACHER & BARTLETT,

*Attorneys for Defendants Television Productions,
Inc., Paramount Pictures, Inc., and Paul Raibourn.*

MUDGE, STERN, WILLIAMS & TUCKER,

Attorneys for Defendants Earl G. Hines and

General Precision Equipment Corporation.

Joseph O. Ollier,

JOSEPH O. OLLIER,

*Attorney for Defendants Arthur Levy and
Scophony Corporation of America.*

5 [Title omitted.]

Affidavit of Service

STATE OF NEW YORK,

County of New York, ss:

Joseph B. Marker, being duly sworn, deposes and says that he is an attorney in the office of the Antitrust Division, Department of Justice, 30 Broad Street, New York, N. Y., and attorney for the plaintiff herein.

That on the 27th day of January 1947, he served a copy of the within Praecept in the above-entitled case by placing the same in a properly postpaid franked envelope addressed to Mudge, Stern, Williams & Tucker, attorneys for the defendants General Precision Equipment Corporation and Earle G. Hines, located at 40 Wall Street, New York, N. Y. And deponent further says that he sealed the said envelope and placed the same in the mail chute.

drop for mailing in the United States Court House, Foley Square,
Borough of Manhattan, City of New York.

Joseph B. Marker.
JOSEPH B. MARKER.

Sworn to before me this 27th day of January 1947.

John J. Olear, Jr.,
JOHN J. OLEAR, JR.,
Notary Public in the State of New York.

9 In the District Court of the United States
For the Southern District of New York

Civil Action No. 34-184

UNITED STATES OF AMERICA, PLAINTIFF

v.
SCOPHONY CORPORATION OF AMERICA, GENERAL PRECISION EQUIP-
MENT CORPORATION, TELEVISION PRODUCTIONS, INC., PARAMOUNT
PICTURES, INC., SCOPHONY LIMITED, ARTHUR LEVEY, EARLE G.
HINES, AND PAUL RAIBOURN, DEFENDANTS

Complaint

Filed Dec. 18, 1945

The United States of America, by its attorneys, acting under
the direction of the Attorney General of the United States, brings
this action against the defendants and complains and alleges
upon information and belief as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted
under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26
Stat. 209, as amended, entitled "An Act to protect trade and
commerce against unlawful restraints and monopolies," com-
monly known as the Sherman Antitrust Act, in order to prevent
and restrain continuing violations by the defendants, as herein-
after alleged, of Sections 1 and 2 of said act.

2. Each of the corporate defendants maintains an office, trans-
acts business and is found within the Southern District of New
York:

II

DEFENDANTS

3. Defendants Scophony Corporation of America, hereinafter referred to as "SCA," is a corporation organized and existing under the laws of the State of Delaware, with offices and its principal place of business in the City of New York.

4. Defendant General Precision Equipment Corporation, hereinafter referred to as "General," is a corporation organized and existing under the laws of the State of Delaware, with offices and principal place of business in the City of New York. General is one of the largest manufacturers and suppliers of motion picture theatre equipment in the United States. One of its subsidiaries, International Projector Corporation, is the largest manufacturer in the United States of the motion picture projectors now employed in motion picture theatres. General is the largest single stockholder in Twentieth Century-Fox Film Corporation, and three of General's directors are members of Twentieth Century's Board of Directors.

5. Defendant Television Productions, Inc., hereinafter referred to as "Productions," is a corporation organized and existing under the laws of the State of California, with an office and place of business in the City of New York. Productions is a wholly owned subsidiary of Paramount Pictures, Inc., and is engaged in the ownership and operation of television broadcasting stations.

6. Defendant Paramount Pictures, Inc., hereinafter referred to as "Paramount," is a corporation organized and existing under the laws of the State of New York, with an office and place of business in the City of New York. Paramount is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies. It owns 100 percent of the stock of defendant Productions. Paramount also owns 50 percent of the stock of Allen B. DuMont Laboratories, Inc., which is an important factor in the electronic and television fields.

7. Defendant Scophony, Limited, hereinafter referred to as "Limited," is a British corporation organized and existing under the laws of the United Kingdom with offices and principal place of business in the City of London, England. Limited transacts business and is found in the City of New York. Limited manufactures and sells television apparatus and is the owner and licensor of inventions purporting to cover, among other things, television reception and transmission systems.

8. Defendant Arthur Levey is president and a director of defendant SCA, and a founder and director of defendant Limited.

He is a substantial stockholder in both of said defendant corporations.

9. Defendant Earle G. Hines is president and a director of defendant General and was until July 1945, a director of defendant SCA.

10. Defendant Paul Raibourn is president of defendant Productions, and was a director of defendant SCA until July 1945. He is also a director of Allen B. DuMont Laboratories, Inc.

14. The combination, conspiracy, contracts, and acts hereinafter complained of have been carried out by the corporate defendants through their officers, directors, agents and representatives, including defendants Arthur Levey, Earle G. Hines, and Paul Raibourn. Said officers, directors, agents, and representatives have approved, authorized, ordered, or done some or all of the acts herein alleged to have been performed.

III

TRADE AND COMMERCE

12. The term "television," as herein employed, means the art whereby a visual image is transmitted by a process of converting light rays into electrical waves and reconvertng the electrical waves into visible light rays which recreate the original image at a distant place. Television was demonstrated as early as 1884.

13. In or about 1907 a cathode-fluorescent system of television was developed under which the image received appears on the end of a cathode tube coated with a fluorescent material. The small size of the direct tube image has led to extensive research into the possibilities of enlarging the image by optical means without the serious loss of brilliance. The cathode-fluorescent system is the principal method of television transmission and reception used in the United States today.

12 14. In 1937 Limited demonstrated a second method of television reception, hereinafter referred to as the supersonic system. In this system light from a strong independent light source, such as the carbon arc employed in motion picture theater projectors, is modulated by supersonic waves and focused on a screen where it forms an image of the televised picture. In 1939 Limited demonstrated commercial supersonic receiving sets including a home set reproducing an image 24 x 20 inches; a school, hotel, and club set reproducing an image 4 feet x 3 feet; and a projector for use in theaters reproducing an image 15 feet x 12 feet. Supersonic theater projectors were installed in two London motion picture houses where televised current events and special features

were projected on standard motion picture screens for a continuous period of eight months terminated by the outbreak of war.

15. In or about 1939 Dr. Adolph Rosenthal obtained and assigned to Limited patents purporting to cover a third system of television transmission and reception; hereinafter referred to as the skiatron system. This system utilizes a modified cathode ray tube, one surface of which is coated with transparent ionic crystals on which the televised image appears. An independent source of light outside of this tube, focused through the transparent image on the tube end, projects an enlargement of the image onto a viewing screen in a manner similar to that employed in motion picture projection.

16. In addition to its uses in the transmission and reception of televised images the tube used in the skiatron system has other important uses, such as in radar equipment.

17. Both SCA and Limited have acquired and expect to acquire present and future patents, patent applications, patent rights, inventions, designs, processes, techniques, technical data, and information relating to television, all of which are hereinafter collectively referred to as the "Scophony inventions." The supersonic and skiatron apparatus and systems hereinbefore described are included in the Scophony inventions.

18. Limited manufactures television and other equipment in England and sells and ships the same in domestic and foreign commerce. Prior to the combination, conspiracy and agreements herein alleged, Limited shipped television and other equipment into the United States. Because of such combination, conspiracy and agreements Limited has refrained from manufacturing or selling such equipment in the Western Hemisphere and has restricted its manufacture and sale of such equipment to the Eastern Hemisphere.

19. The outbreak of the war in Europe in 1939 terminated television broadcasting in England, and as a result of the war all facilities for the development and manufacture of electronic equipment were made subject to government control for war purposes. Limited then sent representatives to exploit the Scophony inventions in the United States. Successful demonstrations of its equipment were made in a studio and in a motion picture theater, both in New York City. Wartime limitations on the transfer of funds out of Great Britain soon curtailed these New York activities. Limited's inability to meet the demands of American creditors jeopardized its ownership of patents in the United States covering some of the Scophony inventions. Under these circumstances an arrangement for the investment of American capital became imperative.

20. Paramount, through its subsidiary Productions, and General indicated a willingness to furnish the necessary capital to Limited provided such financing would not obligate Paramount and Productions to turn over rights under the Scophony inventions to their competitors in the electronic field in accordance with their prior commitments to such competitors.

21. General and Productions have entered into agreements whereby they receive exclusive licenses under the Scophony inventions to manufacture, use and sell television and other equipment within the Western Hemisphere and in the Philippine Islands, and under which they agree not to manufacture, use or sell television equipment or any products embodying the Scophony inventions within the Eastern Hemisphere.

22. Television broadcasts made in the several States of the United States and in foreign countries may be transmitted and received in interstate or foreign commerce by or on equipment covered by the Scophony inventions. Productions operates a television station.

IV

VIOLATIONS OF LAW

23. From in or about September 1941 to the date of the filing of this complaint, the defendants have been violating Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, by monopolizing, attempting to monopolize, combining, and conspiring to monopolize and to restrain, and contracting to restrain trade and commerce among the several States of the United States and with foreign nations in products, processes, patents, and inventions used and useful in television and allied industries. The unlawful monopoly, attempts to monopolize, combination, conspiracy, and contracts are continuing and will continue unless the relief prayed for in this complaint is granted.

24. The unlawful combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants, the terms of which have been:

a. That world territory be arbitrarily divided by the defendants into two noncompetitive areas, i. e., the Eastern Hemisphere and the Western Hemisphere;

b. That Limited sell and transfer to defendant SCA all rights in the Western Hemisphere under all of Limited's present and future Scophony inventions;

c. That General and Productions transfer to SCA all rights in the Eastern Hemisphere under any patent or invention which General and Production may acquire in the future relating to television equipment and apparatus; and that SCA grant to Limited exclusive rights and licenses for the Eastern Hemisphere under said patents and inventions and under all present and future Scophony inventions owned or acquired by SCA;

d. That defendants restrain competition among themselves pursuant to agreements, understandings, and a cross-licensing arrangement under which:

(1) SCA, General and Productions are prohibited from manufacturing in, selling in, or exporting to the Eastern Hemisphere any television equipment or apparatus, or any product embodying the Scophony inventions;

(2) Limited and SCA are excluded from the manufacture or sale in the Western Hemisphere of products purported to be covered by any patent or invention owned or controlled by or transmitted to SCA; and competition between General and Productions with respect to such products is restricted by a division of fields of operation;

e. That all manufacturers and distributors other than General and Productions be excluded and prevented from making, using or selling in the Western Hemisphere any product involving any of the Scophony inventions and

f. That General and Productions have complete power and control over the promotion, utilization or suppression of the Scophony inventions within the Western Hemisphere.

16 25. Said combination and conspiracy has been formed and effectuated by divers means and methods including those hereinafter set forth.

26. On or about July 31, 1942, General, Productions, and Limited, to carry out the conspiracy herein alleged, caused the incorporation of SCA. The certificate of incorporation and bylaws of SCA gave Limited nominal control of SCA but vested an effective veto power in General and Productions by providing that the Board of Directors of SCA could not conduct business unless one director elected by General or Productions was present. The control by General and Productions over the affairs of SCA was further maintained and extended by provisions in said certificate and bylaws that Limited could not dispose of its stock in SCA without first offering such stock to General and Productions.

27. On or about the 31st day of July 1942, Limited, General, and Productions, to carry out the conspiracy herein alleged, entered into a master contract in writing, a copy of which is annexed

hereto, marked "Exhibit (1)," and hereby made a part hereof, which provided, among other thing :

a. That Limited would execute and deliver to SCA the agreement hereinafter described in paragraph 28 of this complaint, the complete form and terms of which were annexed as an exhibit to the master contract;

b. That General and Productions would execute and deliver to SCA the agreement hereinafter described in paragraph 29 of this complaint, the complete form and terms of which were annexed as an exhibit to the master contract;

c. That Limited, General and Productions would cause SCA to execute the agreements referred to in subparagraphs a and b of this paragraph; and

d. That Limited, General and Productions would cause SCA to issue stock to each of them.

17- 28. In accordance with the terms of the master contract as alleged in subparagraph a of paragraph 27 of this complaint, Limited and SCA, on or about August 11, 1942, entered into a contract in writing, a copy of which is annexed hereto, marked "Exhibit (2)," and hereby made a part hereof, which provided in effect, among other things:

a. For definitions of the Eastern and Western Hemispheres for the purpose of dividing the world into two mutually exclusive noncompeting trade territories;

b. That the Eastern Hemisphere be allocated to Limited as exclusive territory for the manufacture and sale of television and other equipment and that SCA should not manufacture or sell such equipment in or export such equipment to the Eastern Hemisphere;

c. That the Western Hemisphere be allocated to SCA as exclusive territory for the manufacture and sale of television and other equipment and that Limited should not manufacture or sell such equipment in or export such equipment to the Western Hemisphere; and

d. That SCA and Limited would exchange rights and licenses under present and future patents, processes, information, and inventions relating to television and other equipment in accordance with such territorial allocations.

29. In accordance with the terms of the master contract as alleged in subparagraph b of paragraph 27 of this complaint, SCA, General, and Productions, on or about August 11, 1942, entered into a contract in writing, a copy of which is annexed hereto, marked "Exhibit (3)," and hereby made a part hereof, which provided in effect, among other things:

a. For definitions of the Eastern and Western Hemispheres for the purpose of dividing the world into two mutually exclusive noncompeting trade territories, said definitions being identical with those contained in the agreement between Limited and SCA described in paragraph 28 hereof;

b. That SCA grants to General and Productions exclusive licenses (without the right to sublicense) within the Western Hemisphere under all present and future Scophony inventions for all purposes other than the manufacture, use and sale of apparatus integrally involved in the projection of motion pictures or in the projection of five foot or wider screen television in places of public entertainment where an admission fee is usually charged;

c. That SCA grants to General an exclusive license (without the right to sublicense) under all present and future Scophony inventions to manufacture, use and sell within the Western Hemisphere apparatus integrally involved in the projection of motion pictures or in the projection of five foot or wider screen television in places of public entertainment where an admission fee is usually charged;

d. That SCA will transmit to General and Productions, and to no other party in the Western Hemisphere, all its available technical data and information including designs, drawings, and specifications used or useful in the development of anything comprised within the Scophony inventions;

e. That SCA reserves the right to license parties other than General and Productions to use the Scophony inventions for the purpose of operating a commercial television broadcasting station in the United States, but the right thus reserved may be exercised only if: (1) General and Productions both give their written consent, or (2) if SCA acquires a 40% stock interest in the licensee;

f. That General and Productions each will grant to SCA, with the right to sublicense to Limited only, exclusive licenses, for the Eastern Hemisphere only, to make, use, and sell television equipment and apparatus embodying any invention, design, process, or technique developed or acquired in the future by General or Productions, or covered by any patent or patent application which may in the future be owned by them;

g. That General and Productions will transmit to SCA with the right of retransmittal to Limited only, all their available technical data and information, including designs, drawings, and specifications used or useful in the development of any patent or invention licensed to SCA by General or Productions;

h. That General and Productions will not make, use, or sell in, or for export to, the Eastern Hemisphere;

(1) Any product embodying the Scophony inventions, or

(2) Any television equipment or apparatus;

i. That SCA will not make, use, or sell any product

(1) Which embodies any of the Scophony inventions, or

(2) Which embodies any patent or invention licensed to SCA by General or Productions;

j. That SCA will not permit Limited to make, use, or sell, or to license others to make, use, or sell, in or for export to the Western Hemisphere any product (1) which embodies any of the Scophony inventions, or (2) which embodies any patent or invention licensed to SCA by General or Productions;

k. That General and Productions shall be required to make minimum royalty payments under the Scophony inventions to SCA aggregating \$5,000 per annum until total royalties paid by said defendants shall equal \$50,000; and

20 l. That upon failure of General and Productions to make the required minimum royalty payments, or if total royalties paid by said defendants within a specified period of time shall not equal \$50,000, the licenses granted by SCA to General and Productions shall lose their exclusive features.

30. The contracts described in the preceding paragraphs of this complaint in all respects have been put into effect and carried out by the defendants and are now in full force and effect.

31. General and Productions have rendered absolute the exclusive feature of their licenses under the Scophony inventions by paying to SCA the total sum of \$50,000, although the period within which such sum is required to be paid under the contract described in paragraph 29 of this complaint has not yet expired, although such sum greatly exceeds the minimum royalties required under said contract to be paid to date by General and Productions, and although said defendants to date have not made any sales or rentals of any products embodying the Scophony inventions.

32. General and Productions have prevented SCA from granting licenses under the Scophony inventions to their competitors in the motion picture and electronic fields, and to others, who were and are ready, able, and willing to develop and exploit said inventions within the Western Hemisphere on terms favorable and advantageous to SCA.

33. General and Productions have to date failed to make any substantial or serious effort to develop and exploit the Scophony inventions licensed to them, or to promote the use and sale or future use and sale of products to be manufactured thereunder.

34. Productions entered into and carried out the contracts, agreements and understandings, and did the acts, herein alleged at the direction, for the benefit and on behalf of Paramount.

21

V

EFFECTS

35. The combination, conspiracy, and contracts, and the acts done in effectuation thereof, as alleged herein, have had, as was intended by the defendants, the following effects:

a. Defendants, directly, substantially, and unreasonably, have been and are restraining, monopolizing, and attempting to monopolize interstate and foreign trade and commerce in television apparatus and equipment and in products and processes embodying the Scophony inventions;

b. Competition in the manufacture and sale of television apparatus and equipment and products and processes embodying the Scophony inventions has been eliminated or suppressed;

c. SCA General and Productions have refrained from competing with Limited in the Eastern Hemisphere in the manufacture and sale of television equipment and apparatus and products and processes embodying the Scophony inventions and from exporting such equipment, apparatus, and products to the Eastern Hemisphere;

d. Limited has refrained from competing with SCA, General and Productions in the Western Hemisphere in the manufacture and sale of television equipment and apparatus and products and processes embodying the Scophony inventions and from exporting such equipment to the Western Hemisphere;

e. SCA has refrained from competing with General and Productions within the Western Hemisphere in products and processes embodying the Scophony inventions;

f. The fields of operation under the Scophony inventions within the Western Hemisphere have been divided between General and Productions and competition between said defendants has thereby been restricted;

22 g. Competition in utilization of the Scophony inventions for television broadcasting purposes has been restrained;

h. General and Productions have acquired complete power and control over the promotion, utilization, or suppression of, and a monopoly of, the Scophony inventions and products purporting to be covered thereby in the Western Hemisphere; and

i. Competitors of Paramount, General, and Productions in the motion picture and electronic fields in the Western Hemisphere

have been and are unable to obtain licenses under the Scophony inventions, and have been and are prevented from employing the essential advances in the television art and utilizing the important television products purported to be covered thereby.

PRAYER

WHEREFORE, plaintiff demands judgment as follows:

(1) That the Court adjudge and decree that the defendants have unlawfully entered into the aforesaid combination and conspiracy, and the aforesaid contracts, agreements, understandings, and activities in violation of Sections 1 and 2 of the Sherman Act.

(2) That the aforesaid agreements entered into for the purpose of effectuating the illegal combination and conspiracy to monopolize and to restrain interstate and foreign trade and commerce in television apparatus and equipment and products and processes purportedly covered by the Scophony inventions be declared invalid and of no further force and effect.

(3) That the defendants and each of them and their officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined from participating in, maintaining, or carrying out any of the practices, contracts, relationships, or understandings described herein or from granting or claiming any rights thereunder having the purpose of reviving or renewing any such practices, contracts, relationships, or understandings.

(4) That the Court order Limited, General, Productions, and Paramount and their officers, directors, agents, representatives, and employees to divest themselves of their respective interests in SCA to such extent as the Court may deem just and proper in the premises.

(5) That the defendants and all of their officers, directors, agents, representatives, and employees, and all persons and corporations acting or claiming to act on behalf of the defendants be enjoined from instituting or maintaining any action or other legal proceedings for the enforcement of any alleged rights under any of the present or future Scophony inventions, or under any provision of the aforesaid agreements between any of the defendants.

(6) That pursuant to Section 5 of the Sherman Act, an order be made and entered herein requiring such of the defendants as are not within this District to be brought before the Court in this proceeding as parties defendant and directing the Marshals of the Districts in which they severally reside to serve summons upon them.

(7) That the plaintiff have such other, further, and different relief as the nature of the case may require and the Court may deem just and proper in the premises and that plaintiff recover the costs of this suit.

Dated New York, New York, 18th day of December 1945.

TOM C. CLARK,
Attorney General.

WENDELL BERGE,
Assistant Attorney General.

HERBERT A. BERMAN,
Special Assistant to the Attorney General.

LAWRENCE S. APSEY,
Special Assistant to the Attorney General.

JOHN F. X. MCGOHEY,
United States Attorney.

MERVIN C. POLLAK,
JOSEPH B. MARKER,
Special Attorneys.

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Exhibit 1 to complaint

This Agreement, dated July 31, 1942, between Scophony, Limited (hereinafter called "Scophony"), a corporation organized under the laws of Great Britain, William George Elcock of Henley House, Curson Street, Mayfair in the County of London Gentleman (hereinafter called the "Mortgagee"), being the mortgagee of the undertaking and all the assets (present and future) of Scophony by way of floating charge, General Precision Equipment Corporation (hereinafter called "General"), a corporation organized under the laws of the State of Delaware, in the United States of America, and Television Productions, Inc. (hereinafter called "Productions"), a corporation organized under the laws of the State of California, in the United States of America; witnesseth:

Scophony or one or more of its affiliated companies is the owner of, or has the right to use and authorize others to use, certain inventions, some of which are or may be the subject of patents and applications for patents issued or issuable by the United States of America and by other governments within the Western Hemisphere.

The parties hereto desire to promote and further the utilization of said inventions and of all additional inventions which Scophony or any one or more of its affiliated companies may hereafter acquire

or become entitled to use and authorize others to use, particularly in the United States of America and generally in the Western Hemisphere.

As a means therefor a corporation with the name Scophony Corporation of America (hereinafter called the "American Company") has been organized under the laws of the State of Delaware, in the United States of America, with an authorized capital stock consisting of 1,000 shares of Class A Common Stock and 1,000 shares of Class B Common Stock. The following
25 have been, or are to be, elected directors or officers of the American Company: as directors, Franklyn Field, Earle G. Hines, Arthur Levey, Paul Raibourn, and Joseph E. Swan; and as officers, Arthur Levey, President; Joseph E. Swan, Vice President; Franklyn Field, Treasurer; Regnold B. LaRue, Secretary; and Bernard Goodwin, Assistant Secretary. A copy of the certificate of incorporation, and a copy of the bylaws, of the American Company are attached as Exhibit A and Exhibit B hereto.

Now, therefore, in consideration of the premises and of the agreements by the parties hereinafter contained, it is agreed as follows:

1. Productions agrees that it will subscribe for 340 shares of the Class B Common Stock of the American Company and will pay therefor \$8,500.00 in cash. General agrees that it will subscribe for 660 shares of the Class B Common Stock of the American Company and will pay therefor \$16,500.00 in cash. Such amounts will be payable by Productions and by General, if not theretofore paid, promptly upon the execution and delivery of the agreement referred to in paragraph 2 below or the delivery to the American Company in New York of duly executed assignments of the patents and patent applications listed in Schedule A to said agreement in accordance with the terms and provisions thereof, whichever shall be later.

2. Scophony agrees promptly to enter into an agreement with the American Company in the form attached as Exhibit C hereto, and in connection therewith Scophony hereby represents and warrants to each of the other parties to this agreement that it or one or more of its affiliated companies is the owner of the patents and patent applications listed in Schedule A to said Exhibit C.

3. Scophony agrees to transfer and deliver to the American Company all equipment in the United States now owned by
26 Scophony, including one RCA television camera, four television projectors and receivers, one film transmitter for television broadcasting purposes, one generator, six light control cells, and other spare parts, test instruments, and small tools. Scophony

authorizes the American Company forthwith to take possession of such equipment, and agrees that, upon the execution and delivery of the agreement referred to in paragraph 2 above, title to all such equipment shall pass to and be vested in the American Company without further act or deed; but Scophony nevertheless agrees to execute such instruments, if any, as may be required by the American Company for the purpose of evidencing the transfer to it of such equipment. Scophony further agrees that it will pay all charges and expenses incurred in connection with said equipment accrued to the date of the execution and delivery of the agreement between it and the American Company in the form attached as Exhibit C hereto, including, without limitation, customs duties, fees, commissions, insurance, storage, transportation, and handling.

4. General and Productions agree, promptly upon the execution and delivery by Scophony and the American Company of the agreement referred to as Exhibit C in paragraph 2 above, to enter into an agreement with the American Company in the form attached as Exhibit D hereto.

5. The parties hereto agree to cause the American Company to execute and deliver the agreements to be executed and delivered by it as stated in paragraphs 2 and 4 above.

6. The parties hereto agree that the American Company shall be obligated to pay as expenses of organization a sum not exceeding \$1,500.00, which shall include all fees and expenses of its counsel preliminary to and in connection with its organization.

27 7. The parties hereto agree to cause the American Company, in consideration of the transfer and assignment to it by Scophony of the equipment referred to in paragraph 3 above, and of the execution and delivery of the agreement between Scophony and the American Company referred to in paragraph 2 above, promptly thereupon to (a) pay to or for the account of Scophony \$15,000.00 as provided in paragraph 8 below, and (b) issue and deliver 1,000 shares of its Class A Common Stock to the following persons in the following amounts, the same being hereby designated by Scophony:

125 shares in accordance with the written instructions of Arthur Levey of 987 Fifth Avenue, New York, N. Y.

100.375 shares to Hans Kraftt, London, England.

54.6875 shares to Otto Augstein, Hotel Windsor, Montreal, Canada.

54.6875 shares to John Augstein, Hotel Windsor, New York, N. Y.

328.125 shares to W. George Elcock of Henley House, Curson Street, London, W., England.

328.125 shares to Scophony.

8. The \$15,000.00 referred to in paragraph 7 will be paid to Barrow, Wade & Guthrie, 120 Broadway, New York, N. Y., for the account of Scophony, with instructions by the American Company to apply the same to the payment and discharge of the liabilities of Scophony in the United States of America listed on Exhibit E hereto and for the payment of any balance remaining to or upon the order of Scophony.

9. In view of the desirability of enabling General and Productions expeditiously to utilize such of the patents and patent applications listed in Schedule A to Exhibit C hereto as they may be able to use in the manufacture of defense instruments or equipment, and the possibility of the lapse of some period of time prior to the recording of the transfer and assignment of such patents and patent applications to the American Company and the granting of licenses thereunder by the American Company to General and Productions, Scophony agrees that the execution of this agreement shall constitute the grant by Scophony to General and Productions of a license to utilize such patents and patent applications for such purpose until they shall have been transferred of record to the American Company, whereupon such license shall terminate, as General and Productions will thereupon obtain a license from the American Company as provided herein, it being understood that any royalties under said license from Scophony shall be payable to the American Company on the basis, and in accordance with the terms and provisions, of the license agreement, Exhibit D hereto.

10. The Mortgagee hereby consents to and agrees to be bound by all of the agreements made by Scophony and the undertakings and obligations on the part of Scophony to be performed under this agreement or under the agreement by Scophony with the American Company in the form of Exhibit C hereto.

11. This agreement, which is the culmination of a protracted negotiation, constitutes the entire agreement between the parties hereto, is to be construed in accordance with the laws of the State of New York and no party hereto shall be subject to or chargeable with any obligation, representation or warranty except such as are expressed in or may be implied from this agreement or any of the exhibits hereto. This agreement may be modified, revised or discharged in whole or in part only by an instrument in writing and no such modification, revision or discharge shall be effective

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against any party hereto unless consented to in writing by such party.

29 In witness whereof, the respective parties hereto have caused this agreement to be signed and sealed on their behalf as of the date first above written.

[L. S.] By (Sgd.) SCOPHONY, LIMITED,
ARTHUR LEVEY,
Attorney-in-fact.

Witness:
(Sgd.) ARTHUR G. DUNN.

[L. S.] By (Sgd.) WILLIAM GEORGE ELCOCK,
ARTHUR LEVEY,
Attorney-in-fact.

Witness:
(Sgd.) ARTHUR G. DUNN.

GENERAL PRECISION EQUIPMENT
CORPORATION,
By (Sgd.) EARLE G. HINES, *President.*

Attest:

R. B. LARUE, *Secretary.*
TELEVISION PRODUCTIONS, INC.,
By (Sgd.) PAUL RAIBOURN, *President.*

Attest:

R. B. LARUE, *Secretary.*

It is agreed by and between Scophony, Limited, William George Elcock, General Precision Equipment Corporation, and Television Productions, Inc., that the agreement, dated July 31, 1942, made between the same parties, be and it is hereby amended by changing Paragraph 7 thereof so that, after such change, Paragraph 7 shall read as follows:

7. The parties hereto agree to cause the American Company, in consideration of the transfer and assignment to it by Scophony of the equipment referred to in paragraph 3 above, and of the execution and delivery of the agreement between Scophony and the American Company referred to in paragraph 2 above, promptly thereupon to (a) pay to or for the account of Scophony \$15,000.00 as provided in paragraph 8 below, and (b) issue and deliver
30 1,000 shares of its Class A Common Stock to the following persons in the following amounts, the same being hereby designated by Scophony: 625 shares to Scophony, Limited; 250 shares to Hans Krafft, Otto Augstein and John Augstein; and 125 shares to Arthur Levey.

In witness whereof, the parties hereto have caused this agreement to be signed and sealed on their behalf as of February 4, 1943.

[L. s.] By ,
SCOPHONY, LIMITED,
Attorney-in-fact.

Witness:

[L. s.] By ,
WILLIAM GEORGE ELCOCK,
Attorney-in-fact.

Witness:

Attest: By ,
GENERAL PRECISION EQUIPMENT CORPORATION,
President.

Attest: By ,
TELEVISION PRODUCTIONS, INC.,
President.

Attest: By ,
Secretary.

31 *Exhibit 2 to complaint*

AGREEMENT

Agreement made this 11th day of August, 1942 by and between Scophony, Limited, a British corporation having its principal place of business in London, England (hereinafter referred to as "Scophony"), William George Elcock of Henley House, Gurzon Street, Mayfair, in the County of London Gentleman (hereinafter referred to as the "Mortgagee"), being the mortgagee of the undertaking and all the assets (present and future) of Scophony by way of floating charge, and Scophony Corporation of America, a corporation organized under the laws of Delaware and having an office at 100 West Tenth Street, Wilmington, Delaware (hereinafter referred to as the "American Company").

Scophony or one or more of its affiliates is the owner of, or has the right to use and authorize others to use, certain inventions, some of which are or may be the subject of patents and applications for patents issued or issuable by the United States and by other governments within the Western Hemisphere.

The parties hereto desire to promote and further the utilization of said inventions and of all additional inventions which Scophony

or any one or more of its affiliates may hereafter acquire or become entitled to use and authorize others to use, particularly in the United States of America and generally in the Western Hemisphere and to that end the American Company contemplates entering into an agreement (hereinafter called the "American Company Agreement") with General Precision Equipment Corporation and Television Productions, Inc.

The parties hereto desire to promote and further the utilization of all inventions which the American Company may hereafter acquire or become entitled to use and authorize others to use in the Eastern Hemisphere, including, without limitation, all inventions which General Precision Equipment Corporation (hereinafter called "General") and/or Television Productions, Inc. (hereinafter called "Productions") may license for that purpose.

Now, therefore, in consideration of the premises and of the agreement by the parties hereinafter contained, it is agreed as follows:

1. The "Western Hemisphere" is hereby defined to be all the area lying west of twenty degrees west longitude and east of one hundred sixty degrees east longitude and, in addition, to include the Philippine Islands.

The "Eastern Hemisphere" is hereby defined to be all the area lying outside the Western Hemisphere.

2. "Termination of the National Emergency in the United States" is hereby defined to mean either (a) the date upon which there shall be issued an official proclamation by the President of the United States that there no longer exists the National Emergency declared by the President of the United States on September 8, 1939, and May 27, 1941, to exist or (b) the date upon which the state of war in which the United States is involved at the date of this agreement is terminated as declared or recognized by the Government of the United States, whichever of said dates is the later.

The word "affiliate" when used in relation to Scophony is hereby defined to mean any company, corporation, syndicate, association, or other business unit directly or indirectly controlling or controlled by Scophony, but shall not include the American Company.

The word "affiliate" when used in relation to the American Company is hereby defined to mean any company, corporation, syndicate, association, or other business unit directly or indirectly controlling, controlled by, or under common control with the American Company, but shall not include Scophony or General or Productions, or any corporation directly or indirectly controlling, controlled by, or under common control with any of them.

The word "subsidiary" when used in relation to General or Productions is hereby defined to mean any corporation of which at least a majority of the outstanding capital stock, having the right to vote for the election of directors and other purposes, shall at the time be owned, directly or indirectly, by General or Productions, as the case may be, but shall in no event include the American Company.

2. Scophony hereby sells, transfers, and conveys, and agrees to cause its affiliates to sell, transfer, and convey, to the American Company all its and their right, title and interest in and to all letters patent, applications for letters patent, and patent rights, including reissues, extensions, and renewals, within any of the countries in the Western Hemisphere, together with the inventions, designs, processes, and techniques covered thereby, including, without limitation, the letters patent, applications for letters patent, and patent rights listed in Schedule A attached hereto and forming a part hereof; and Scophony agrees to sell, transfer, and convey and to cause its affiliates to sell, transfer, and convey, to the American Company all its or their right, title, and interest in and to any letters patent, applications for letters patent, and patent rights within any of the countries in the Western Hemisphere, together with the inventions, designs, processes, and techniques covered thereby, which it or its affiliates may hereafter acquire. Scophony hereby represents that it and one or more of its affiliates are the sole owners of the letters patent, applications for letters patent, and patent rights listed in said Schedule A and that neither it nor any of its affiliates has transferred any interest therein or granted any license thereunder to any other party and that neither it nor any of its affiliates has transferred any interest in any other letters patent, applications for letters patent or patent rights in the Western Hemisphere or granted any license thereunder to any other party. Scophony agrees that neither it nor any of its affiliates will hereafter transfer to any other party any interest in or grant to any other party any license under any letters patent, application for letters patent, or patent rights transferred or to be transferred to the American Company hereunder. Scophony agrees promptly to execute or cause its appropriate affiliate or affiliates to execute an assignment or assignments of said letters patent, applications for letters patent and patent rights, including all causes of action which may have arisen thereunder, to the American Company in proper form for recording in the appropriate offices in the respective countries which issued the said letters patent or in which applications for letters patent are pending.

3. Scophony hereby grants, and will cause its affiliates to grant, licenses to the American Company in the Western Hemisphere, in the broadest terms and for the longest time permissible, including the right to sublicense, under any patent rights now or hereafter owned by or licensed to it or any of its affiliates which Scophony or any such affiliate cannot assign or authorize the American Company to apply for but as to which Scophony or such affiliate can grant a license to the American Company in the Western Hemisphere.

4. Scophony agrees that the American Company shall have the right to file applications for letters patent in all countries of the Western Hemisphere based on any invention, design, process, or technique which Scophony or any affiliate now owns or may hereafter acquire and Scophony agrees at its expense promptly to transmit to the American Company all necessary documents and assignments, in form acceptable to the American Company, duly and properly signed by the inventors and all other necessary parties, assigning to the American Company for the Western Hemisphere, such invention, design, process or technique, the application to be filed in respect thereof, and the letters patent which may issue upon such filing. Scophony agrees that the American Company shall have the right to prosecute said applications for letters patent by counsel of its own selection, but at its own expense.

5. The letters patent, applications for letters patent, patent rights, inventions, designs, processes, and techniques transferred or to be transferred to the American Company pursuant to the provisions of Section 2 hereof, the patent rights in respect of which licenses are or are to be granted to the American Company pursuant to Section 3 hereof and the inventions, designs, processes, and techniques in respect of which the American Company has or shall have the right to file applications for letters patent pursuant to Section 4 hereof are hereinafter collectively referred to as the Scophony Patents.

Scophony agrees at its expense promptly to transmit to the American Company, and not to any other party in, or for use in, the Western Hemisphere, all technical data and information, including designs, drawings, and specifications, available to Scophony or any of its affiliates and used or useful in the development or utilization of any invention, design, process, or technique comprised within the Scophony Patents.

In order to enable the American Company to develop and utilize all inventions, designs, processes, and techniques which are not comprised within the Scophony Patents and whether or not patented or patentable but which Scophony or any of its affiliates by virtue of ownership thereof or otherwise are entitled at the date of this agreement or any time hereafter to use or to authorize others

to use, Scophony agrees at its expense promptly to transmit to the American Company and not to any other party in, or for use in, the Western Hemisphere like technical data and information available to it or any of its affiliates pertaining to such inventions, designs, processes, and techniques.

6. The American Company hereby grants a license to Scophony and its affiliates for the Eastern Hemisphere only and without the right to sublicense, to make, use, and sell television equipment and apparatus, and to make, use and sell other products required for the prosecution of the existing war by any of the United Nations, and embodying any invention, design, process, or technique covered by any letters patent or application for letters patent licensed by General and/or Productions to the American Company under the American Company Agreement. Said license insofar as it pertains to the manufacture, use and sale of products required for the prosecution of said war shall continue from the date of this agreement until the Termination of the National Emergency in the United States and said license insofar as it pertains to the manufacture, use, and sale of television equipment and apparatus shall continue until the full end of the term for which said letters patent are or may be granted, including reissues, extensions, and renewals thereof.

7. The American Company agrees at its expense promptly to transmit to Scophony, and not to any other party in, or for use in, the Eastern Hemisphere all technical data and information, including designs, drawings, and specifications, hereafter available to the American Company or any one or more of its affiliates and used or useful in the development or utilization of any invention, design, process, or technique then licensed to the American Company by General and/or Productions or in respect of which the American Company or any one or more of its affiliates, by virtue of ownership thereof or otherwise, would have a right to file an application for letters patent in any of the countries of the Eastern Hemisphere had this agreement not been made at which the American Company or any one or more of its affiliates would hereafter be entitled to use or to authorize others to use in any of the countries of the Eastern Hemisphere. Scophony agrees that it will not, and will not suffer or permit any of its affiliates to file or prosecute any application for letters patent in any country in the Eastern Hemisphere upon the basis, or involving the use, of any technical data or information received by the American Company from General or Productions, as the case may be; and Scophony further agrees that it will not, and will not suffer or permit any of its affiliates to use any such technical data or information except for the purpose of making, using, and selling television equipment and apparatus, and of making,

using, and selling other products required for the prosecution of the war by any of the United Nations, and then only upon the terms and conditions provided in this agreement. The

40 American Company agrees that Scophony shall have the right to file applications for letters patent in any one or more of the countries of the Eastern Hemisphere based on any invention, design, process, technique, technical data, and information received by the American Company from any party other than General or Productions, and the American Company agrees promptly to transmit to Scophony, without expense to the latter, all necessary documents and assignments in form acceptable to Scophony, duly and properly signed by the inventors and all other necessary parties, assigning to Scophony for the Eastern Hemisphere such invention, design, process, or technique, the application to be filed thereon and the letters patent which may issue upon such filing. The American Company agrees that Scophony shall have the right to prosecute said patent applications by patent counsel of its own selection, but at its own expense.

The American Company hereby grants a license to Scophony and its affiliates in the Eastern Hemisphere in the broadest terms and for the longest time permissible, including the right to sublicense, under any patent rights now or hereafter acquired by or licensed to the American Company from any party other than General or Productions which the American Company cannot assign or authorize Scophony to apply for but as to which the American Company can grant a license to Scophony and its affiliates in the Eastern Hemisphere.

41 8. It is understood that the agreements relative to technical data and information referred to in Sections 5 and 7 hereof and relative to the assignment of any patent rights or the granting of any licenses contemplated by this agreement, are subject to any restrictions or prohibitions which may be imposed by the government of Great Britain or of the United States, as the case may be.

9. The American Company hereby agrees to pay to Scophony a royalty equal to five percent (5%) of the net sales price received by the American Company and its licensees in United States funds as the result of the sale of each produce or device covered by any of the Scophony Patents; or if any such product or device is only partially covered by said patents, to pay a royalty equal to five percent (5%) of the net sales price of the portion thereof covered by said patents, provided, however, such royalty shall in no event exceed a sum equal to five percent (5%) of the net sales price of the complete product or device.

The American Company further agrees to pay to Scophony a royalty equal to five percent (5%) of the net proceeds realized by

the American Company and its licensees in United States funds as the result of the rental of each product or device covered by any of the Scophony Patents, or if any such product or device is only partially covered by said patents, to pay a royalty equal to five percent (5%) of a sum which bears the same relation to the total said net proceeds which the net sales price of the portion thereof covered by said patents bears to the net selling price of the complete product or device, provided, however, such royalty shall in no event exceed a sum equal to five percent (5%) of the net proceeds realized as the result of the rental of the complete product or device.

If in any case there shall be no established selling price for a product or device sold or rented by the American Company or any of its licensees, the direct manufacturing cost of such product or device shall, for the purposes of this Section 9, be substituted for the net sales price in computing royalties payable in respect thereof.

10. Scophony hereby agrees to pay to the American Company a royalty equal to ten percent (10%) of the net sales price received by Scophony and its affiliates and licensees in English funds, as the result of the sale of each product or device covered by letters patent now or hereafter assigned or licensed to Scophony, or for the issuance of which Scophony shall be authorized to file an application, under the terms of this agreement; or if any such product or device is only partially covered by said patents, to pay a royalty equal to ten percent (10%) of the net sales price of the portion thereof covered by said patents, provided, however, such royalty shall in no event exceed a sum equal to ten percent (10%) of the net sales price of the complete product or device.

Scophony further agrees to pay to the American Company a royalty equal to ten percent (10%) of the net proceeds realized by Scophony and its affiliates and licensees in English funds as the result of the rental of each product or device covered by said patents; or if any such product or device is only partially covered by said patents, to pay a royalty equal to ten percent (10%) of a sum which bears the same relation to the total said net proceeds which the net sales price of the portion thereof covered by said patents bears to the net selling price of the complete product or device, provided, however, such royalty shall in no event exceed a sum equal to ten percent (10%) of the net proceeds realized as the result of the rental of the complete product or device.

If in any case there shall be no established selling price for a product or device sold or rented by Scophony or any of its affiliates or licensees, the direct manufacturing cost of such product or device shall, for the purposes of this Section 10, be substituted for

the net sales price in computing royalties payable in respect thereof.

44 11. Scophony agrees that neither it nor any of its affiliates will, or will license others to, make, use, or sell any product in, or for export to, the Western Hemisphere (a) which is covered in whole or in part by any of the Scophony Patents, or (b) which involves the use of any invention, design, process, technique, technical data, or information licensed or transmitted by the American Company to Scophony or any of its affiliates pursuant to this agreement.

The American Company agrees that neither it nor any of its affiliates will, or will license others to, make, use or sell any product in, or for export to, the Eastern Hemisphere (a) which is covered in whole or in part by the Scophony Patents, or (b) which involves the use of any invention, design, process, technique, technical data, or information licensed or transmitted by the American Company to Scophony or any of its affiliates pursuant to this agreement.

It is understood that until the Termination of the National Emergency in the United States, the provisions of this Section 11 shall not be applicable to products required for the prosecution of the existing war by any of the United Nations.

12. In case any suit is brought against Scophony or any of its affiliates charging them or any of them with infringement
45 as a result of the use by them or any of them of any of the inventions, designs, processes, or techniques licensed by General or Productions to the American Company and by it licensed to Scophony hereunder, Scophony shall have the right at its election to:

(a) Withhold one-half of the royalties which would otherwise be due and payable to the American Company under Section 10 hereof by virtue of the sale or rental of products involving the use of such inventions, designs, processes, or techniques, during the period from the institution of such suit until the final termination thereof; and

(b) Confess judgment; or

(c) Defend said suit with counsel of its own choice; or

(d) Settle said suit and all claims involved therein or related thereto by the purchase of any alleged conflicting patent rights or of a license thereunder or by the grant of a license in respect of any of said inventions, designs, processes or techniques; or in any other proper manner, including cash payment; all as Scophony shall determine to be in its interest.

Upon the final termination of such suit by judgment, settlement or otherwise, one-third of all costs and expenses incurred by Scophony and its affiliates in connection with such suit and such

46 termination thereof, including profits, damages, royalties, and other sums, if any, paid by Scophony, shall be reimbursed to it, first by the application thereto of so much as is necessary of the royalties theretofore withheld by Scophony under the foregoing provisions hereof, and then by the application thereto from time to time of one-half of the royalties thereafter to become due to the American Company, as and when they accrue.

13. In case any suit is brought against General or any of its subsidiaries and/or Productions or any of its subsidiaries charging it or them with infringement as a result of the use of any of the Scophony Patents, the American Company shall withhold one-half of the royalties which would otherwise be due and payable to Scophony under Section 9 hereof by virtue of the sale or rental of units, subassemblies and parts during the period from the institution of the unit until the final termination thereof. Upon the final termination of such suit, that portion of the costs and expenses incurred by General and its subsidiaries and/or Productions and its subsidiaries in connection with such suit and the termination thereof for which they are entitled to reimbursement under the provisions of the American Company Agreement shall, when paid by the American Company, be reimbursed to it by Scophony, first by the application thereto of so much as is necessary of the royalties theretofore withheld by the American Company under the foregoing provisions hereof, and then by the application thereto from time to time of one-half of the royalties thereafter to become due to Scophony and when they accrue.

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14. In case Scophony shall believe that any third party in the Eastern Hemisphere is infringing any invention, design, process, or technique licensed by General or Productions to the American Company and by it licensed to Scophony and its affiliates hereunder, Scophony or any of its affiliates shall have the right to institute at its expense an infringement suit against any such party and to abandon, prosecute, or settle such suit as to it shall seem advisable and to its interest. Upon the final termination of such suit by judgment, settlement or otherwise, one-third of all costs and expenses incurred and paid by Scophony and its affiliates in connection with such suit and such termination thereof shall be reimbursed to Scophony, first, by the application thereto of so much as is necessary of the sum, if any, recovered by Scophony and its affiliates in connection with the final termination of such suit, and then by the application thereto from time to time of one-half of the royalties thereafter to become due to the American Company, as and when they accrue. Scophony agrees to pay to the American Company as promptly as practicable after the ter-

mination of any such suit, one-third of the balance of the sum, if any, recovered by it and its affiliates in connection with the termination of such suit remaining after the deduction of all costs and expenses incurred by it and its affiliates in connection with such suit and the termination thereof, as aforesaid.

48 15. In case General or Productions, as the case may be, shall believe that any third party in the Western Hemisphere is infringing any Scophony Patent and shall institute an infringement suit against such party as provided in the American Company Agreement, then all net sums required to be paid by the American Company on account of costs and expenses incurred by General and its subsidiaries or Productions and its subsidiaries, as the case may be, in connection with such suit and its termination shall be reimbursed to the American Company by Scophony by the application thereto from time to time of one-half of the royalties thereafter to become due to the American Company as and when they accrue; and all net sums received by the American Company from General and its subsidiaries or Productions and its subsidiaries, as the case may be, on account of any amounts recovered by them in connection with the termination of such suit shall upon receipt thereof by the American Company be by it paid to Scophony.

16. Subject to all applicable laws, rules, regulations, and orders of any governmental authority, the American Company agrees that within forty-five days after the end of each of its fiscal quarters it will pay in New York to Scophony, or its agent, in New York funds, all royalties due to it under Section 9 hereof in respect of all net proceeds in New York funds received by the American

49 Company at its home office during such quarter on account of the sale or rental of products. Said payment shall be accompanied by an appropriate account of the royalties payable with respect to such quarter, certified by a duly authorized officer of the American Company. The American Company will at any time at the request and at the expense of Scophony cause any quarterly statement rendered or to be rendered by the American Company to Scophony as aforesaid to be certified by such public accountant or firm of public accountants as shall at the time be retained by the American Company for the general auditing of its accounts.

17. Subject to all applicable laws, rules, regulations, and orders of any governmental authority, Scophony agrees that within forty-five days after the end of each of its fiscal quarters it will pay in London to the American Company, or its agent, in London funds, all royalties due to it under Section 10 hereof in respect of all net proceeds in London funds received by Scophony at its home

office during such quarter on account of the sale or rental of products. Said payment shall be accompanied by an appropriate account of the royalties payable with respect to such quarter, certified by a duly authorized officer of Scophony. Scophony will at any time at the request and at the expense of the American Company cause any quarterly statement rendered or to be rendered by Scophony to the American Company as aforesaid to be certified by such public accountant or firm of public accountants as shall at the time be retained by Scophony for the general auditing of its accounts.

50 18. Scophony represents that it owns all right, title, and interest in and to certain personal property in the United States, including one television camera, four projectors and receivers, one film transmitter, one generator, six light control cells and other spare parts, test instruments, and small tools. Scophony hereby sells, assigns, and transfers to the American Company all right, title, and interest in and to the above-named personal property and all other equipment in the United States owned by Scophony.

19. Scophony and the American Company hereby agree that this agreement and all rights, benefits, and causes of action in favor of the American Company hereunder, shall be enforceable not only by the American Company but also by General or Productions or both of them in their own names or in the name of the American Company, but in any event for the benefit of the American Company.

20. Each of the parties hereto for itself agrees that at any time or from time to time at the written request of the other party hereto it will at its expense execute and deliver or cause to be executed and delivered all such applications, assignments, bills of sale, agreements, and other instruments as may be necessary or desirable in order further to assure and carry into effect the full intent and purpose of this agreement and the enjoyment of the rights and benefits provided herein.

51 21. This agreement, which is the culmination of a protracted negotiation, constitutes the entire agreement between the parties hereto and is to be construed in accordance with the laws of the State of New York; and no party hereto shall be subject to or chargeable with any obligation, representation, or warranty except such as are expressed in or may be implied from this agreement. This agreement may be modified, revised, or discharged in whole or in part only by an instrument in writing and no such modification, revision, or discharge shall be effective against any party hereto unless consented to in writing by such

party and by General Precision Equipment Corporation and Television Productions, Inc.

In witness whereof, the respective parties hereto have caused this agreement to be signed and sealed on their behalf as of the date first above written.

[L.S.] By (Signed) SCOPHONY, LIMITED,
ARTHUR LEVEY,
Attorney-in-fact.

Witness:
(Signed) ARTHUR G. DUNN.

[L.S.] By (Signed) WILLIAM GEORGE ELCOCK,
ARTHUR LEVEY,
Attorney-in-fact.

Witness:
(Signed) ARTHUR G. DUNN.

By (Signed) SCOPHONY CORPORATION OF AMERICA,
FRANKLIN FIELD,
Treasurer.

Attest:

(Signed) R. B. LARUE,
Secretary.

AGREEMENT

Agreement made this 11th day of August 1942, by and between Scophony Corporation of America, a corporation organized under the laws of Delaware and having an office at 100 West Tenth Street, Wilmington, Delaware (hereinafter referred to as the "American Company"), General Precision Equipment Corporation, a corporation organized under the laws of Delaware and having its principal place of business in the City of New York, New York (hereinafter referred to as "General"), and Television Productions, Inc., a corporation organized under the laws of the State of California and having its principal place of business in the City of Los Angeles, California (hereinafter referred to as "Productions").

The American Company has entered into an agreement (hereinafter called the "Scophony Agreement") dated the 11th day of August 1942, with Scophony, Limited, a British corporation having its principal place of business in London, England, and William George Elcock of Henley House, Curzon Street, Mayfair, in the County of London Gentleman.

Now, therefore, in consideration of the premises and of the mutual agreements herein contained, the parties hereto agree as follows:

1. "The "Western Hemisphere" is hereby defined to be all the area lying west of twenty degrees west longitude and east of one hundred sixty degrees east longitude and, in addition, to include the Philippine Islands.

The "Eastern Hemisphere" is hereby defined to be all the area lying outside the Western Hemisphere.

"Termination of the National Emergency in the United States" is hereby defined to mean either (a) the date upon which there shall be issued an official proclamation by the President of the United States that there no longer exists the National Emergency declared by the President of the United States on September 8, 1939, and May 27, 1941, to exist or (b) the date upon which the state of war in which the United States is involved at the date of this agreement is terminated as declared or recognized by the Government of the United States, whichever of said dates is the later.

The word "subsidiary" when used in relation to General or Productions is hereby defined to mean any corporation of which at least a majority of the outstanding capital stock, having the right to vote for the election of directors and other purposes, shall at the time be owned, directly or indirectly, by General or Productions, as the case may be, but shall in no event include the American Company.

The word "affiliate" when used in relation to the American Company is hereby defined to mean any company, corporation, syndicate, association, or other business unit directly or indirectly controlling, controlled, by or under common control with the American Company but shall not include Scophony, Limited, or General or Productions, or any corporation directly or indirectly controlling, controlled, by or under common control with any of them.

The word "affiliate" when used in relation to Scophony, Limited, is hereby defined to mean any company, corporation, syndicate, association, or other business unit directly or indirectly controlling or controlled by Scophony, Limited, but shall not include the American Company.

2. The American Company hereby grants to General and to each of its subsidiaries and to Productions and to each of its subsidiaries licenses (without the right to sublicense) to use all the inventions, designs, processes, and techniques covered by letters patent and applications for letters patent listed in Schedule A attached hereto and forming a part hereof, and all other inventions, designs, processes, and techniques now or hereafter owned or controlled by or licensed to the American Company or any of its affiliates or which it or any of them is entitled to use and is not precluded from authorizing others to use, whether or not covered by

letters patent or applications for letters patent (all of which inventions, designs, processes, and techniques are hereinafter referred to as the "licensed inventions"), for all purposes other than the manufacture, use and sale of apparatus integrally involved in the projection of motion pictures or five foot or wider screen television in theatres and other places of public entertainment, in-

cluding army camps, where motion pictures or television
 55 are exhibited to the general public as a business and where an admission fee is usually and customarily charged, with the right, except as aforesaid, to manufacture products in accordance with or embodying any of the licensed inventions and to use, sell, or dispose of such products. The American Company also hereby grants to General and to each of its subsidiaries, without the right to sublicense, a license to use the licensed inventions in the manufacture, use, and sale of apparatus integrally involved in the projection of motion pictures or five foot or wider screen television in theatres and other places of public entertainment, including army camps, where motion pictures or television are exhibited to the general public as a business and where an admission fee is usually and customarily charged. Subject to any territorial restrictions contained in any agreement under which the American Company may have acquired or may acquire rights in respect of any of the licensed inventions, the licenses granted hereunder shall be for the entire Western Hemisphere. The licenses hereby granted shall with respect to any of the licensed inventions extend to the full end of the term for which any letters patent covering the same are or may be granted, including reissues, extensions, and renewals thereof.

3. The American Company hereby reserves the right from time to time to license or sublicense to others the right to use any of the licensed inventions for the purpose of operating a commercial
 56 television broadcasting station duly licensed under the laws of the United States of America but only upon one of the following alternative conditions, namely:

(a) Both General and Productions shall consent in writing to each such license or sublicense; or

(b) The American Company shall acquire in consideration of granting each such license or sublicense such number of shares of the equity stock of the licensee or sublicensee that immediately after the grant of such license or sublicense the American Company will own at least 40% of the total outstanding equity stock of said licensee or sublicensee; or

(c) General or Productions or any subsidiary of either of them shall have established and be operating a commercial television broadcasting station duly licensed under the laws of the United

States of America and involving the use of the so-called Scophony mechanical television system.

For the purposes of subdivision (b) of this section, the term "equity stock" shall mean the outstanding class or classes of capital stock of a corporation entitled to vote for the election of directors and other purposes and, upon liquidation or dissolution, to the final distribution of assets remaining after payment and discharge of all obligations of the corporation and payment and distribution of all preferential amounts to which the holders of other classes of stock of the corporation shall be entitled.

4. Subject to the provisions of Section 8 hereof, the American Company agrees that it will not make, use, or sell (except for purposes of experimentation and research by it) any product manufactured in accordance with or embodying any of the licensed inventions or, except as provided in Section 3 above, grant to any others any license or sublicense in respect of any of the licensed inventions.

5. The American Company agrees at its expense promptly to transmit to General and to Productions all technical data and information, including designs, drawings, and specifications, now or hereafter available to the American Company and used or useful in the utilization of any of the licensed inventions, including, without limitation, all that it receives under the Scophony Agreement; and further agrees that it will not transmit said technical data and information to any other party except to parties who may be licensed as permitted in Section 3 and 8 hereof.

6. It is contemplated by all parties to this agreement that the American Company will, at its expense, file, and prosecute patent applications in such countries in the Western Hemisphere, and in respect of such inventions, designs, processes, or techniques hereafter acquired by it, as shall in its judgment warrant such action. The American Company nevertheless need not file or prosecute a patent application in any country in the Western Hemisphere in respect of any invention, design, process, or technique, if it shall regard such action as unwarranted or inadvisable in its interest.

If within sixty days after receipt by the American Company of technical data and information pertaining to any invention, design, process, or technique upon which an application for letters patent has not theretofore been made in a particular country in the Western Hemisphere (accompanied by all documents, assignments, and other instruments necessary for and in proper form for the making of said application) the American Company shall not have filed appropriate application for letters patent in such country in the Western Hemisphere, or, having

filed such application, shall not be prosecuting the same with due diligence, then the American Company at any time and from time to time thereafter at the written request of General and/or Productions, will either file and prosecute, or proceed diligently to prosecute, such application in such country, and will appoint as its attorney and agent for such purpose the person or persons specified in such request. In the event that General and/or Productions shall make any such request, the American Company may itself pay the costs and expenses of filing and/or prosecuting such application and of procuring the issuance of letters patent thereon, or if it so requires by notice in writing, all such costs and expenses shall be borne by the party, or equally by the parties, making such request. Any amounts paid by General or by Production as or

on account of such costs and expenses shall constitute a
 59 credit against all royalties and sums then and thereafter payable by it under this agreement and shall be reimbursed to it by the application of one-half, but not more, of all such royalties and sums, and until one-half of such royalties and sums, not otherwise paid or discharged, shall have equalled the amounts so paid by it as or on account of said costs and expenses, the rate of royalties payable by it in respect of products involving the inventions, designs, processes or techniques covered by said application and made, used or sold by it and/or its subsidiaries in, or made and sold for export to, the country or countries specified in said request shall be only one-half the rate of royalty specified in Section 7 hereof.

7. General and Productions each for itself agrees to pay to the American Company:

(a) A royalty of ten percent (10%) of the net sales price received by it and its subsidiaries in New York funds as the result of the sale by it or any of its subsidiaries of each product or device covered by patents licensed under this agreement, or, if any such product or device is only partially covered by said patents, to pay a royalty equal to ten percent (10%) of the net sales price of the portion thereof covered by said patents so received by it and its subsidiaries; provided, however, such royalty shall in no event exceed the sum equal to ten percent (10%) of the net sales price of the complete product or device.

60 (b) A royalty equal to ten percent (10%) of the net proceeds realized by it and its subsidiaries in New York funds as the result of the rental by it or any of its subsidiaries of each product or device covered by patents licensed under this agreement, or, if any such product or device is only partially covered by said patents, to pay a royalty equal to ten percent (10%) of a sum which bears the same relation to the total said net proceeds so received by it and its subsidiaries which the net

sales prices of the portion thereof covered by said patents bears to the net selling price of the complete product or device; provided, however, such royalty shall in no event exceed a sum equal to ten percent (10%) of the net proceeds realized as the result of the rental of the complete product or device.

If in any case there shall be no established selling price for a product or device so sold or rented, the direct manufacturing cost of such product or device shall, for the purpose of this Section 7, be substituted for the net sales price in computing royalties payable in respect thereof.

8. General and Productions severally agree to pay to the American Company on September 1, 1942 and quarterly thereafter

61 a minimum royalty of \$825 per quarter and \$425 per quarter, respectively, until all royalties and sums paid under this agreement by General and Productions shall have equalled \$50,000, subject to the condition that General and Productions may each, on or at any time after August 31, 1943, exercise the election to cease making such payments and to proceed solely upon the royalty basis provided in Section 7 hereof, and that upon the exercise of such election by either of said parties the other may at its option increase its minimum royalty payments to \$1,250.00 per quarter. In the event that both General and Productions shall exercise said election or in the event that either of them shall exercise said election and the other shall not increase its minimum royalty payments then and thereafter to \$1,250.00 per quarter, the American Company shall be released from the agreements contained in Section 4 hereof and will thereupon be entitled itself to make, use, and sell products involving the licensed inventions and to grant licenses in respect of the licensed inventions to others for all purposes. In the event, however, that General or Productions shall exercise said election and the other shall increase its minimum royalty payments then and thereafter to \$1,250.00 per quarter, the American Company shall be released from the agreements contained in Section 4 hereof as to the party exercising said election but not as to the other party. In any event the licenses herein granted shall not be otherwise affected except that General and Productions shall be entitled to the benefit of any more favorable terms and provisions contained in any such license or licenses to others. The minimum quarterly royalty payments made pursuant hereto by General and Productions shall be credited against all royalties and sums then or thereafter

62 respectively payable by them under any provision of this Agreement.

If the aggregate amount of all royalties and sums paid by General and Productions under this Agreement during the period from the date of this Agreement to a date two years subsequent

to the Termination of the National Emergency in the United States shall not be at least equal to \$50,000, and if either General or Productions or both of them shall fail to make good the deficiency within thirty days after receipt by both of them of written notice from the American Company of the existence and amount of said deficiency, by paying the American Company a sum (either in cash or by way of credit upon any amounts then due from the American Company under this Agreement) equal to the difference between \$50,000 and said aggregate amount of all royalties and sums paid by both said licensees, then and at any time thereafter, irrespective of the royalties and other sums thereafter paid or payable by General and/or Productions under this Agreement, the American Company shall, as to the party or parties failing to make good such deficiency, be released from the agreements contained in Section 4 hereof and will, as to such party or parties, thereupon be entitled itself to make, use, and sell products involving the licensed inventions and to grant licenses in respect of the licensed inventions to others for all purposes, but the licenses herein granted shall not be otherwise affected except that General and Productions shall be entitled to the benefit of any more favorable terms and provisions contained in any such license or licenses to others. No payment made to the American Company by

63 General and/or Productions for the purpose of making good any deficiency as above provided shall constitute a credit against royalties and sums thereafter respectively payable by them under any provision of this Agreement.

9. Subject to all applicable laws, rules, regulations, and orders of any governmental authority, General and Productions each for itself agrees that within forty-five days after the end of each of its fiscal quarters it will (a) render to the American Company an appropriate account in writing, certified by one of its duly authorized officers, showing the royalties payable by it with respect to such quarter, the credits or deductions thereagainst pursuant to the terms of this Agreement, and the net amount due to the American Company, and (b) pay to the American Company in New York funds the net amount due it as shown on said account. General and Productions each for itself agrees that it will at any time at the request and expense of the American Company cause any quarterly account rendered or to be rendered by it as aforesaid to be certified by such public accountant or firm of public accountants as shall at the time be retained by it for the general auditing of its accounts.

10. General and Productions each for itself hereby grants to the American Company an exclusive license for the Eastern Hemisphere only, to make, use, and sell television equipment and apparatus, and to make, use, and sell other products required

for the prosecution of the existing war by any of the
 64 United Nations, and embodying in either case, any invention, design, process, or technique hereafter developed or acquired and covered by any letters patent or application for letters patent hereafter owned by General or any of its subsidiaries or by Productions or any of its subsidiaries, as the case may be, at a royalty with respect to the sale or rental of each product or device covered in whole or in part by such letters patent or applications therefor equal to one-half of the royalty provided in Section 7 hereof, and computed upon the same basis. Said license, insofar as it pertains to the manufacture, use, and sale of products required for the prosecution of said war shall continue from the date of this agreement until the Termination of the National Emergency in the United States, and said license insofar as it pertains to the manufacture, use, and sale of television equipment and apparatus shall continue until the full end of the term for which said letters patent are or may be granted, including reissues, extension, and renewals thereof. The American Company shall have the right to grant a sublicense under any of said letters patent or applications therefor, to Scophony, Limited and affiliates, pursuant to the provisions of the Scophony Agreement, but shall have no further right of sublicense.

11. Subject to all applicable laws, rules, and regulations of any governmental authority, the American Company agrees
 65 that within forty-five days after the end of each of its fiscal quarters it will (a) render to General and to Productions an appropriate account in writing certified by one of its duly authorized officers showing the royalties payable by it with respect to such quarter, the credits or deductions thereagainst pursuant to the terms of this agreement, and the net amount due to General or Productions, as the case may be, and (b) pay to General or Productions, as the case may be, in New York funds, the net amount due it as shown on said account. The American Company agrees that it will at any time at the request and expense of General or Productions, as the case may be, cause any quarterly account rendered or to be rendered by it as aforesaid to be certified by such public accountant or firm of public accountants as shall at the time be retained by it for the general auditing of its accounts.

12. General and Productions each for itself agrees promptly to transmit to the American Company, without expense to it, all technical data and information, including designs, drawings, and specifications, hereafter available to General or Productions, as the case may be, and used or useful in the utilization of any invention, design, process, or technique hereafter developed or acquired by General or any of its subsidiaries or by Productions or any of its subsidiaries, as the case may be, and licensed here-

under. General and Productions each for itself further agrees that the American Company may from time to time transmit
 66 said technical data and information to Scophony, Limited, under the Scophony Agreement; and the American Company agrees that it will not transmit said technical data and information to any other party.

It is contemplated by all parties to this agreement that General or Productions, as the case may be, will at its expense file and prosecute patent applications in such countries in the Eastern Hemisphere, and in respect of such inventions, designs, processes, or techniques hereafter acquired by it, as shall in its judgment warrant such action. Nevertheless neither General nor Productions need file or prosecute a patent application in any country in the Eastern Hemisphere in respect of any invention, design, process, or technique if it shall regard such action as unwarranted or undesirable in its interest.

If within sixty days after receipt by the American Company from General or Productions of technical data or information pertaining to any invention, design, process, or technique hereafter developed or acquired by General or its subsidiaries or by Productions or its subsidiaries, as the case may be, General or Productions shall not have filed an appropriate application for letters patent in any particular country in the Eastern Hemisphere, or, having filed said application shall not be prosecuting the same with due diligence, then General or Productions, as the
 67 case may be, at any time or from time to time thereafter at the written request of the American Company will either

file and prosecute, or proceed diligently to prosecute, such application in such country, and will appoint as its attorney and agent for such purpose the person or persons, specified in such request. In the event that the American Company shall make any such request, General or Productions, as the case may be, may itself pay the costs and expenses of filing and/or prosecuting said application and of procuring the issuance of letters patent thereon, or if required by notice in writing from General or Productions, as the case may be, all such costs and expenses shall be borne by the American Company. Any amounts paid by the American Company as or on account of such costs and expenses shall constitute a credit against all royalties and sums then and thereafter payable by it under this agreement and shall be reimbursed to it by the application of one-half, but not more, of all such royalties and sums, and until one-half of such royalties and sums, not otherwise paid and discharged, shall have equalled the amounts so paid by it as or on account of said costs and expenses the rate of royalties payable by it in respect of television equipment and apparatus or in respect of products required for

the prosecution of the existing war by any of the United Nations and involving the inventions, designs, processes, and techniques covered by said application and made, used, or sold in, or for export to, the country or countries specified in said request shall be only one-half the rate of royalties specified in Section 10 hereof.

68 13. The American Company agrees that it will not, and will not suffer or permit Scophony, Limited, or any of its affiliates, to file or prosecute any application for letters patent in any country in the Eastern Hemisphere upon the basis of or involving the use of any technical data or information transmitted to it by General or Productions as the case may be; and the American Company agrees that it will not, and will not suffer or permit Scophony, Limited, or any of its affiliates, to transmit any such technical data or information to any other party or to use the same except for the purpose of making, using, and selling television equipment and apparatus and of making, using and selling other products required for the prosecution of the war by any of the United Nations, and then only upon the terms and conditions herein provided.

14. General and Productions each for itself agrees that neither it nor its subsidiaries will make, use, or sell in, or for export to, the Eastern Hemisphere (a) any product which embodies any of the licensed inventions, or (b) any television equipment or apparatus; and the American Company agrees (a) that it will not, and will not suffer or permit Scophony, Limited, or any of its affiliates to make, use, or sell or license others to make, use, or sell in, or for export to, the Western Hemisphere any product

69 which involves the use of any invention design, process, technique, technical data, or information licensed or transmitted to the American Company by General or Productions and (b) that it will not suffer or permit Scophony, Limited, or any of its affiliates to make, use, or sell or license others to make, use, or sell in or for export to, the Western Hemisphere any product which embodies any of the licensed inventions. It is understood that until the Termination of the National Emergency in the United States the provisions of this Section 14 shall not be applicable to products required for the prosecution of the existing war by any of the United Nations.

15. In case any suit is brought against General or any of its subsidiaries or Productions or any of its subsidiaries, charging them or any of them with infringement as a result of the use by them or any of them of any of the licensed inventions,

General or Productions, as the case may be, shall have the right at its election to:

(a) Withhold one-half of the royalties which would otherwise be due and payable to the American Company under Section 7 hereof by virtue of the sale or rental of products involving the licensed inventions during the period from the institution of such suit until the final termination thereof; and

(b) Confess judgment; or

(c) Defend said suit with counsel of its own choice; or

(d) Settle said suit and all claims involved therein or related thereto by the purchase of any alleged conflicting patent rights or of a license thereunder or by the grant of a license in respect of any of the licensed inventions hereunder; or in any other proper manner, including cash payment; all as General or Productions, as the case may be, shall determine to be in its interest.

Upon the final termination of such suit by judgment, settlement, or otherwise, one-third of all costs and expenses incurred by General and its subsidiaries or by Productions and its subsidiaries, as the case may be, in connection with such suit and such termination thereof, including profits, damages, royalties, and other sums, if any, paid by General or Productions, as the case may be, shall be reimbursed to General or Productions, as the case may be, first by the application thereto of so much as is necessary of the royalties theretofore withheld by General or Productions, as the case may be, under the foregoing provisions hereof, and then by the application thereto from time to time of one-half of the royalties thereafter to become due to the American Company as and when they accrue.

16. In case any suit is brought against Scophony, Limited, or any of its affiliates charging it with infringement as a result of the use by it of any of the inventions, designs, processes, and techniques licensed by General or Productions under this Agreement, the American Company shall have the right to withhold one-half of the royalties which would otherwise be due and payable to General or Productions under Section 10 hereof by virtue of the sale or rental of television equipment and apparatus, or of products required for the prosecution of the existing war by any of the United Nations, and involving inventions, designs, processes, or techniques licensed by General or Productions under this agreement, during the period from the institution of the suit until the final termination thereof. Upon the final termination of such suit, that portion of the costs and expenses incurred

by Scophony, Limited, and its affiliates in connection with such suit and the termination thereof for which it is entitled to reimbursement under the provisions of the Scophony Agreement shall, when paid by the American Company, be reimbursed to it by General or Productions as the case may be, first by the application thereto of so much as is necessary of the royalties theretofore withheld by the American Company under the foregoing provision hereof, and then by the application thereto from time to time of one-half of the royalties thereafter to become due to General or Productions, as the case may be, as and when they accrue.

17. In case General or Productions shall believe that any third party in the Western Hemisphere is infringing any of the licensed inventions, it shall have the right to institute at its expense an infringement suit against any such party and to abandon, prosecute or settle such suit as to it shall seem advisable and to its interest. Upon the final termination of such suit by judgment, settlement, or otherwise, one-third of all costs and expenses incurred and paid by General and its subsidiaries or by Productions and its subsidiaries, as the case may be, in connection with such suit and such termination thereof, shall be reimbursed to General or Productions, as the case may be, first by the application thereto of so much as is necessary of the sums, if any, recovered by General and/or Productions in connection with the final termination of such suit, and then by the application thereto from time to time of one-half of the royalties thereafter to become due to the American Company, as and when they accrue. General and Productions, each for itself, agrees to pay to the American Company as promptly as practicable after the termination of any such suit one-third of the balance of the sums, if any, recovered by it in connection with the termination of such suit remaining after deduction of all costs and expenses incurred by it in connection with such suit and the termination thereof, as aforesaid.

18. In case Scophony, Limited, or any of its affiliates shall believe that any third party in the Eastern Hemisphere is infringing any invention, design, process, or technique licensed by General or Productions hereunder and shall institute an infringement suit against such party as provided in the Scophony Agreement, then any net sum required to be paid by the American Company on account of costs and expenses incurred by Scophony, Limited, and its affiliates in connection with such suit and its termination shall be reimbursed to the American Company by General or Productions, as the case may be, by the

application thereto from time to time of one-half of the royalties thereafter to become due to the American Company as and when they accrue; and all net sums received by the American Company from Scophony and its affiliates on account of any amounts recovered by them in connection with the termination of such suit shall, upon receipt thereof, by the American Company, be paid to General and/or Productions, as their interest may appear.

19. The American Company represents that it owns and has possession of certain personal property, including one television camera, four projectors and receivers, one film transmitter, one generator, six light control cells and other spare parts, test instruments, and small tools and agrees that General and Productions shall each have reasonable access to said personal property and to the drawings, specifications, and data relative thereto free of charge and shall have the right from time to time to make temporary use of such personal property for the purposes of this agreement to the extent consistent with their use by the American Company.

74 20. The American Company agrees that until September 1, 1944, the services of its engineering and technical personnel shall at all times be held available to meet the engineering, technical, research, or development requirements of General and Productions upon terms to be mutually agreed upon but at a cost in no event to exceed the cost of such services to the American Company plus twenty-five percent (25%).

21. Any assignment of moneys payable to the American Company or to General or to Productions hereunder shall be subject to any and all rights of the parties hereto in or under this agreement and any and all claims or rights of setoff under this agreement or otherwise, whether now or hereafter in existence or arising before or after any such assignment.

22. This agreement, which is the culmination of a protracted negotiation, constitutes the entire agreement between the parties hereto and is to be construed in accordance with the laws of the State of New York; and no party hereto shall be subject to or chargeable with any obligation, representation or warranty except

75 such as are expressed in or may be implied from this agreement. This agreement may be modified, revised or discharged in whole or in part only by an instrument in writing and no such modification, revision or discharge shall be effective against any party hereto unless consented to in writing by such party.

In witness whereof, the respective parties hereto have caused this agreement to be executed on their behalf by their officers thereunto duly authorized and their respective corporate seals

to be hereunto affixed and attested, all as of the day and year first above written.

SCOPHONY CORPORATION OF AMERICA.
By ARTHUR LEVEY, *President*.

[SEAL]

Attest:

[CORPORATE SEAL]

R. B. LARUE, *Secretary*.

GENERAL PRECISION EQUIPMENT CORPORATION.
By EARLE G. HINES, *Pres.*

Attest:

[CORPORATE SEAL]

R. B. LARUE, *Secretary*.

TELEVISION PRODUCTIONS, INC.
By BERNARD GOODWIN, *Vice Pres.*

Attest:

[CORPORATE SEAL]

ARTHUR ISRAEL, JR., *Asst. Secretary*.

[File endorsement omitted.]

76 In United States District Court

Marshal's return.

I hereby certify and return, that on December 20, 1945, I received the within summons and on December 20, 1945, at 527 Fifth Avenue, New York, N. Y. I served same on the within-named defendant, Scophony Limited by delivering to and leaving a copy thereof, together with a copy of the bill of complaint with Arthur Levey, Director.

JAMES E. MULCAHY,

U. S. Marshal, S. D. N. Y.

By JAMES A. SHANAHAN,

Deputy U. S. Marshal, S. D. N. Y.

77 In United States District Court

[Title omitted.]

Notice of special appearance

Please take notice that the undersigned appears specially for the defendant Scophony, Limited in the above-entitled action.

Dated January 8, 1946.

EDWIN FOSTER BLAIR,

*Attorney for Scophony, Limited, Office and Post Office
Address: 20 Exchange Place, Borough of Manhattan,
City of New York, N. Y.*

To JOHN F. X. MCGOHEY, Esq.,

*United States Attorney for the Southern District of
New York.*

In United States District Court

Marshal's return

I hereby certify and return, that on April 4, 1946, I received the within summons and on April 5, 1946; at 108 East 38 Street, New York, N. Y. I served same on the within-named defendant, Scophony Limited, by delivering to and leaving a copy thereof, together with a copy of the bill of complaint with William George Eleock, Financial Comptroller and a Director of said defendant.

JAMES E. MULCAHY,

U. S. Marshal, S. D. N. Y.

By ANTHONY A. LOCASTRO,

Deputy U. S. Marshal, S. D. N. Y.

In the District Court of the United States

[Title omitted.]

Notice of motion to dismiss

Filed Oct. 30, 1946

Please take notice that the undersigned will bring the within motion on for hearing before this Court in Room 506, United States Courthouse, Foley Square, New York, N. Y., on the 17th day of May 1946, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated New York, N. Y., May 10, 1946..

Yours, etc.,

EDWIN FOSTER BLAIR,

Attorney for Scophony, Limited, Appearing Specially,
Office and Post Office Address: 20 Exchange Place,
Borough of Manhattan, City of New York, N. Y.

To:

JOSEPH B. MARKER,

Special Attorney,

Attorney for United States of America.

SIMPSON, THACHER & BARTLETT,

Attorneys for Television Productions, Inc., Paramount
Pictures and Paul Raibourn.

MUDGE, STERN, WILLIAMS & TUCKER,

Attorneys for Earl G. Hines and General Precision
Equipment Corporation.

JOSEPH O. OLLIER,

Attorney for Arthur Levey and Scophony Corporation
of America.

80 In the District Court of the United States

[Title omitted.]

Motion to dismiss

Filed Oct. 30, 1946

The defendant Scophony, Limited appears specially herein only for the purpose of raising objections numbered (2), (4), and (5) of Rule 12 (b) of the Federal Rules of Civil Procedure and does not submit itself to the jurisdiction of the Court.

Said defendant Scophony, Limited moves the Court pursuant to Rule 12 (b) and (g) of the Federal Rules of Civil Procedure as follows:

1. To dismiss the action as to said defendant on the ground that the Court lacks jurisdiction over said defendant and that the purported process and the purported service thereof are insufficient to vest jurisdiction in the Court;

2. To dismiss the action as to said defendant, or in lieu thereof to quash the purported process and service of process herein as to said defendant on the ground that the Court lacks jurisdiction of the person of said defendant and on the further ground
80a that the purported process issued herein and the purported service thereof are insufficient to vest jurisdiction in the Court; because, as appears from the annexed affidavit of William George Elcock, this defendant is a corporation organized under the laws of the United Kingdom, has no place of business in the United States, is not found in the United States, does not transact any business in the United States and is not subject to suit or service of process issued from the District Court of the Southern District of New York.

Said defendant Scophony, Limited further moves the Court in the alternative, if the aforesaid motion be denied, for an order extending the time of the defendant Scophony, Limited to answer, move or otherwise proceed in relation to the complaint herein to ten (10) days from the service upon its attorney of a copy of said order with notice of entry thereof; and for such other and further relief as the Court in the premises may deem proper.

Respectfully submitted.

EDWIN FOSTER BLAIR,

*Attorney for Scophony, Limited, Appearing Specially,
Office and Post Office Address: 20 Exchange Place,
Borough of Manhattan, City of New York, N. Y.*

Dated New York, N. Y., May 10, 1946.

81 In the District Court of the United States

[Title omitted.]

Affidavit of W. G. Elcock

• Filed Oct. 30, 1946

STATE OF NEW YORK,

County of New York, ss:

W. G. Elcock, being duly sworn, deposes and says:

1. I am a director of defendant Scophony, Limited, a British corporation organized and existing under the laws of the United Kingdom. Said corporation has its offices and principal place of business in London, England, and is engaged in the manufacture and sale of scientific and precision instruments. Said corporation owns a stock interest in Scophony Corporation of America, a Delaware corporation which is one of the defendants in the above-entitled litigation. I am a subject and resident of the United Kingdom. I am temporarily within the United States in connection with said litigation, having volunteered as a director of Scophony, Limited to make this visit to the United States for the purpose of settling said litigation and in order to resolve, if possible, an impasse in the internal affairs of said Scophony Corporation of America. I make this affidavit in support of the motion by Scophony, Limited for an order setting aside the service of summons and dismissing the complaint as to it.

82 2. Scophony, Limited is a foreign corporation. Said corporation is not now, and was not at any time when service of summons and complaint was attempted herein, or at any time since then, transacting any business within the United States of America or its possessions, or within the territorial jurisdiction of this Court.

3. Without limiting the generality of the foregoing statement in paragraph 2 hereof, Scophony, Limited does not at the present time and did not at any time when service of summons and complaint was attempted herein:

- (a) Maintain any office or agency or warehouses or other place of business;
- (b) Own any real estate or other physical property;
- (c) Employ any agents or employees (aside from counsel in this action and your deponent as attorney in fact);
- (d) Keep any telephone or telephone listing;
- (e) Make any sales;
- (f) Conduct any research;

(g) Solicit any orders within the United States of America or its possessions, or within the territorial jurisdiction of this Court.

4. No officer of Scophony, Limited is now, or was at any time when service of the summons and complaint was attempted herein, or was at any time since then, a resident or citizen of the United States of America or of any of its possessions.

83. 5. Scophony, Limited has not qualified to do business under the laws of any state or possession of the United States of America.

6. Service was attempted on defendant Scophony, Limited by delivery to Arthur Levey, then a director of said defendant, of a copy of the summons and complaint in the City of New York, State of New York, on December 20, 1945. Arthur Levey is not, and was not at that time, authorized to transact any business on behalf of the corporation in the United States. Service was also attempted on defendant Scophony, Limited by delivery to me on April 5, 1946 of a copy of the summons and complaint in my hotel room in The Town House in the City and State of New York. The only things I was then and am now doing in the United States on behalf of defendant Scophony, Limited were and are as follows:

(a) An attempt to adjust the impasse in the affairs of said Scophony Corporation of America brought about by the above-entitled litigation and by dissention among its stockholders, and

(b) An attempt to dispose of the defendant Scophony, Limited's stock interest in said Scophony Corporation of America.

W. G. ELCOCK.

Sworn to before me this 9th day of May 1946.

ANNE R. GERACE,
Notary Public, Bronx County.

84 Copy received 5/10/46. James C. Wilson, Special Assistant to the Attorney General. - By J. Hallameck.
[File endorsement omitted.]

85 In the District Court of the United States
[Title omitted.]

Affidavit in opposition to motion to dismiss

Filed Oct. 30, 1946

Joseph B. Marker, being duly sworn, deposes and says:

1. I am a Special Attorney in the Antitrust Division of the Department of Justice and am engaged in the prosecution of the

above action. I am personally familiar with the facts hereinafter set forth.

2. This affidavit is submitted in opposition to the Motion made by Scophony, Limited, one of the defendants in the above-entitled action, to dismiss the above action as against the defendant Scophony, Limited, on the ground that the Court lacks jurisdiction over said defendant and that the service of process herein was insufficient to vest jurisdiction in the Court.

3. The action herein has been brought pursuant to Section 4 of the Act of Congress of July 2, 1890, C. 674, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopoly," said act being commonly known as the Sherman Antitrust Act, against the above-named defendants in order to prevent violations by them of the aforesaid Act. Among other matters, the complaint herein alleges that Scophony, Limited, entered into agreements with other defendants in the above action whereby the world markets for products relating to television equipment were divided among the named defendants including Scophony, Limited. Copies

86 of these agreements were attached to the complaint in this action as Exhibits 1, 2, and 3. In the consideration of this motion by Scophony, Limited, all the allegations in the complaint, except those allegations relating to jurisdiction, must be deemed to have been proved and established.

4. Pursuant to an order of this Court dated April 16, 1946, the plaintiff took the deposition of William George Elcock on April 25, 26, 27, and 29, 1946. This deposition is now on file in this Court. Also pursuant to said order, a subpoena duces tecum was served on William George Elcock and he produced certain documents demanded by said subpoena.

5. Plaintiff has had access to the files of the defendant Scophony Corporation of America which also contained some documents and material relating to Scophony, Limited, the moving defendant.

6. Deponent's statements in this affidavit are based principally on information obtained from the files of Scophony Corporation of America, from the deposition of William George Elcock, and documents produced by William George Elcock pursuant to subpoena.

7. William George Elcock is Financial Comptroller and a Director of Scophony, Limited. On March 24, 1946, Mr. Elcock arrived in the United States with an irrevocable power of attorney from Scophony, Limited which empowered him to deal with and even to dispose of Scophony, Limited's interests and assets in the United States, including its substantial shareholdings in Scophony

¹ Hereafter Elcock's deposition will be referred to by the letters "ED" and exhibits introduced in this deposition by the abbreviation "EX."

Corporation of America. This power of attorney dated March 14, 1946 is irrevocable for one year thereafter (E. D., Ex. 4). In return for financial assistance in or about October 1941, to Scophony, Limited Mr. Elcock received, (1) a mortgage against all the assets of Scophony, Limited, (2) special shares in Scophony, Limited, which were equivalent to the rights of 10% of the outstanding shares in Scophony, Limited, (3) a financial comptroller's agreement whereby he had a most important voice of not complete control over the affairs, operations, and policies of Scophony, Limited, (4) a service agreement whereby he received annual compensation from Scophony, Limited; and (5) he became a director of Scophony, Limited (See E. D., Ex. 1). When, during the course of the taking of his deposition, Mr. Elcock was asked whether his position in Scophony, Limited, was such that he was in "control of the company" he did not deny it. He answered: "That's a very complete legal point. That's a legal point" (D, 230).

8. Arthur Levey, one of the named defendants in this action, is also president and director of the defendant Scophony Corporation of America,² a cofounder of Scophony, Limited, in England, and a director of Scophony, Limited, at least from 1936 until March 15, 1946. Arthur Levey was negotiating on behalf of Scophony, Limited, for the establishment of Scophony, Limited, in the United States as far back as 1938. His negotiations culminated in the execution of the master agreement dated July 31, 1942, between Scophony, Limited, William George Elcock, General Precision Equipment Corporation, and Television Products, Inc., a copy of which is attached to the complaint in this action as Exhibit 1; this agreement was signed by Arthur Levey as attorney in fact for Scophony, Limited, and William George Elcock. Pursuant to the agreements attached as exhibits to the complaint herein, Scophony, Limited, was enabled to select the president, vice president, and treasurer of the new American corporation, Scophony Corporation of America, and three of its five directors. Arthur Levey has continued to be the first president of SCA, and he also is a director of SCA representing the interest which was controlled by Scophony, Limited, i. e. the "A" shareholders. Since the execution of the agreements attached as exhibits to the complaint herein, Arthur Levey has continued to represent Scophony, Limited, in the affairs of Scophony Corporation of America. Thus in March 1945 Arthur Levey was given an irrevocable power of attorney by Scophony, Limited, to vote Scophony, Limited's rights as the owner of two-thirds of the "A" stock in Scophony Corporation of America, particularly the selec-

² As in the complaint in this action, Scophony Corporation of America will sometimes be referred to as "SCA."

tion of three of the five members of the Board of Directors of SCA (ED., Ex. 10). He has continually sent reports to Scophony, Limited. He has been advised that he continued to represent Scophony, Limited, in the affairs of SCA.

9. On December 20, 1945 service of process in the above action was made on the defendant Scophony, Limited, by service of a copy of the summons and complaint in this action on Arthur Levey, an agent and a director of Scophony, Limited, in New York City. He immediately informed Scophony, Limited, in England of this action and advised them to designate appropriate counsel. On December 21, 1945 Levey sent a copy of the complaint herein to Scophony, Limited, in England via airmail.

10. On April 5, 1946 a copy of the summons and complaint in this action was served on Scophony, Limited, by service being made on William George Elcock, Financial Comptroller and a director of Scophony, Limited, in his hotel in New York City.

11. In 1938 Arthur Levey and one Solomon Sagall, who was then the Managing Director of Scophony, Limited, were in the United States where they engaged in negotiations and examined into circumstances and conditions within the United States for the establishment of an American branch of Scophony, Limited. Negotiations were conducted with various parties in the entertainment and financial worlds, but Sagall was not satisfied with several propositions that Levey brought forth. Paramount Pictures, Inc., and Lehman Brothers were among the parties who evinced an interest in the introduction of Scophony television into the United States.

89 12. In the spring of 1939 Scophony, Limited, manufactured and placed on the market in London, England, several commercial television sets. These television sets included models which projected large-size television on motion-picture screens, school and club model receivers, and home receivers. Scophony-motion-picture-theater television sets were purchased and installed by two London theaters. Various events were televised; sell-out crowds attended and paid premium prices to see these events. Television broadcasts continued in these theaters until the outbreak of war with Germany on September 1, 1939, when the British Broadcasting Corporation stopped its television broadcasts.

13. In 1940 Scophony, Limited, sent its Managing Director, several engineers, and various television equipment, to the United States, where television broadcasting and reception continued without interruption by the war. Arthur Levy had continued his negotiations to establish an American branch of Scophony, Limited, and he had developed a proposition with a group of financial underwriters which was headed by Joseph E. Swan,

who is now a partner in Hayden, Stone & Co., whereby an initial underwriting of two and one-half million dollars was contemplated for the American Scophony company. These representatives of Scophony, Limited, rented space at 689 Fifth Avenue, New York, New York, and proceeded to make arrangements for the demonstration of Scophony Television. In addition to making demonstrations for parties who might be interested in the establishment in an American branch of Scophony, Limited, demonstration shows were also presented to members of the Federal Communications Commission and also representatives of the press. In furtherance of these demonstrations, Scophony, Limited, purchased a television camera from the Radio Corporation of America.

14. On or about May 15, 1941, Scophony, Limited, entered into an agreement with the Midtown Theater Corporation, the owner and operator of the Rialto Theater located at 1481 Broadway, New York, New York. By this agreement the Midtown Theater Corp. leased from Scophony, Limited, a Scophony motion-picture-theater television receiver for a minimum period of 13 weeks. This agreement was signed on behalf of Scophony, Limited, by S. Sagall, Managing Director, and Arthur Levey, Director. Scophony theater-television equipment was installed in the Rialto Theater and a successful television broadcast was shown on the Rialto screen on or about June 21, 1941. Shortly thereafter the Federal Communications Commission issued a ruling that, effective July 1, 1941, the standard for television transmission in the United States would be changed from 441 lines per frame to 525 lines per frame. This change in television's standards by the FCC required modifications and alterations in equipment in all television broadcasting and reception systems. Because equipment manufacturers were having their production restricted by government defense priorities, Scophony, Limited, encountered considerable difficulty in having the new equipment manufactured for it; several equipment manufacturers started but were unable to complete equipment sought from them by Scophony, Limited, because of priority restrictions.

15. Thus at least by the latter part of 1941 the representatives of Scophony, Limited, in the United States found themselves in financial distress. It is common knowledge that during the war and continuing to date, the British Government placed very severe restrictions on the exportation of funds out of England. These restrictions by the English Government made it very difficult, if not impossible for Scophony, Limited, to send additional funds to its representatives in the United States. In the course of the business that it had been doing in the United States, Scophony, Limited, had entered into various financial obligations and had

become indebted to various creditors, some of whom resorted to legal action in order to obtain recovery for their obligations.

91 16. In September 1941, Scophony, Limited, became involved in an action in the City Court of the City of New York. Counsel for Scophony, Limited, entered a general appearance in this action.

17. In or about October 1941, Arthur Levey was engaging in negotiations with Paramount Pictures Inc. and General Precision Equipment Corp. which finally resulted in the agreements which are attached as Exhibits to the Complaint in this action; these agreements are dated July 31, 1942 and August 11, 1942. During these protracted negotiations there were innumerable communications between Scophony, Limited, and its agent, Arthur Levey. These communications include discussions relating to various proposals and various drafts of agreements in which these various proposals were embodied. These agreements provide, among other things, that Scophony, Limited, sell all its equipment in the United States to Scophony Corporation of America and that monies obtained by Scophony, Limited, under these agreements be used to pay Scophony, Limited's creditors in the United States. These agreements also provided for the transfer by Scophony, Limited, to SCA of all Scophony, Limited's present and future patents and patent applications within the Western Hemisphere and all technical information and data relating to such patents and patent applications.

18. In an agreement dated February 4, 1943, the master agreement dated July 31, 1942, was amended with regard to the division of the Class "A" common stock. The agreement of July 31, 1942, provided that one-third of the Class "A" common stock of SCA would be allocated to Scophony, Limited, and one-third to William George Elcock. From about September 1942 until the end of January 1943, Scophony, Limited, endeavored to have the "A" shares of SCA placed in a voting trust; communications
92 regarding this matter passed between Scophony, Limited, and Arthur Levey (see Elcock's D., Govt.'s Ex. 19 & 20).

In January 1943, Scophony, Limited, withdrew its requests for a voting trust arrangement and agreed to modify the allocations of the "A" stock which had been set forth in the master agreement of July 31, 1942. The new allocations for the "A" stock were embodied in the amended agreement of February 4, 1943, whereby two-thirds of the "A" shares were allocated to Scophony, Limited.

19. During 1943, Scophony Corporation of America entered into negotiations with Dr. A. H. Rosenthal which resulted in completion of an employment contract between Scophony Corporation of America and Dr. Rosenthal. While in the employ of Scophony, Limited, in London, England, in 1939, Dr. Rosenthal had pur-

portedly invented the Skiatron system of television and patent applications were made thereon in the United States as well as elsewhere. Arthur Levey kept Scophony, Limited, advised about the negotiations with regard to Dr. Rosenthal. The employment of Dr. Rosenthal by SCA in the United States meant that all new developments, improvements, and modifications that Dr. Rosenthal might develop with regard to Scophony inventions, particularly the Skiatron, would be made available exclusively to Scophony, Limited, within the Eastern Hemisphere. The employment of Dr. Rosenthal by Scophony Corporation of America, which envisaged a research and development laboratory to be established by SCA under the supervision and direction of Dr.

93 Rosenthal, resulted in a substantial drain on SCA's limited funds. Thus the employment of Dr. Rosenthal was one of the causes of the financial problems within SCA about which Arthur Levey kept Scophony, Limited, advised and about which he engaged on behalf of both SCA and Scophony, Limited, in negotiations looking toward modifications in the agreements attached as Exhibits 1, 2, and 3 of the Complaint herein.

20. The agreements attached to the Complaint as Exhibits 1, 2, and 3 also provide that General Precision Equipment Corp. and Television Products Inc., a wholly owned subsidiary of Paramount Pictures Inc., have exclusive licenses to exploit the Scophony inventions within the Western Hemisphere, including the United States. These exclusive licensees also own all the "B" stock of Scophony Corporation of America; "B" stock has the right to elect two-fifths of the members of the board of directors of SCA and also to elect the secretary and assistant secretary.

21. As early as the spring of 1943, Arthur Levey was disputing with the "B" directors of Scophony Corporation of America about the manner in which the exclusive licensees, the owners of the "B" stock, were exploiting, or rather failing to exploit, the Scophony inventions. These disputes between Levey and the "B" directors continued and became more acrimonious until the "B" directors resigned from the Board of Scophony Corporation of America in July 1945. Levey contended that the failure of the "B" directors to agree to or to carry out various proposals, which often included and would require modification of the basic agreements between the corporate defendants herein, were preventing

94 Scophony Corporation of America from obtaining funds to continue to operate and to exist; and that without such funds the equity of the "A" share-holders in Scophony Corporation of America would become diluted if not wiped out. The resignation of the "B" directors in July 1945, meant that under the bylaws of SCA there could not be a quorum at a meeting of the board of directors until at least one other "B" director was named

by either of the two owners of the "B" stock. Throughout his deposition, W. G. Elcock referred to the disputes within the board of SCA, the resultant resignations of the "B" directors, and the institution of the present Antitrust suit as elements which constitute an "impasse" within the affairs of SCA with which Scophony Limited was vitally concerned.

22. Arthur Levey continually and in great detail advised Scophony, Limited, about the affairs of Scophony Corporation of America, particularly with regard to the causes and reasons for his disputes with the "B" directors. These communications were usually between Arthur Levey and Sir Maurice Bonham-Carter, Chairman of the Board of Directors of Scophony, Limited. Bonham-Carter requested Arthur Levey to keep Scophony, Limited, advised as to the affairs of Scophony Corporation of America. These numerous and detailed reports by Levey to Bonham-Carter bear the stamp of an agent reporting and explaining to his principal; this was natural because Arthur Levey continued as President and as a director of SCA only at the pleasure of Scophony, Limited.

23. In or about October 1943 and thereafter in 1944 and 1945, the Raytheon Company of Cambridge, Mass., an important manufacturer of electronic equipment, indicated an interest in obtaining a nonexclusive license in the United States under the Scophony patents, particularly with regard to the Skiatron system of television. The granting of any license under the Scophony invention

within the United States would require a modification of the basic agreements set forth as Exhibits 1, 2, and 3 to the complaint herein, and such modifications would require the consent of all the corporate defendants. The "B" directors did not approve a license to Raytheon. Scophony, Limited, was advised of the interest of Raytheon in obtaining a Scophony license.

24. In or about October 1943 the Sylvania Electric Company, manufacturers of electric and electronic equipment, indicated an interest in obtaining a nonexclusive license under the Scophony inventions. The "B" directors did not approve a license to Sylvania and the modifications in the basic agreements which would be necessary. Scophony Limited, was advised of the interest of Sylvania in obtaining a license under the Scophony inventions.

25. In or about October 1943, Rogers Radio Tubes, Limited, of Canada indicated an interest in obtaining a nonexclusive license under the Canadian patents purportedly owned by SCA. The "B" directors did not approve a license to Rogers Radio Tubes, Limited, and the modifications in the basic agreements which would be necessary. Scophony, Limited, was advised of the interest of Rogers Radio Tubes, Limited, in obtaining a license under the Scophony inventions.

26. In or about November 1943, Sperti, Inc., indicated an interest in a nonexclusive license in the United States under the Scophony patents. The "B" directors did not approve a license to Sperti, Inc., and the modifications in the basic agreements which would be necessary. Scophony, Limited, was advised of the interest by Sperti, Inc., in a license under the Scophony patents.

27. In or about April 1944 the American Type Founders Corp. indicated an interest in a nonexclusive license in the United States under the Scophony patents. The "B" directors did not approve a license to American Type Founders Corp. and the modifications in the basic agreements which would be necessary. Scophony, Limited, was advised of the interest of the American Type Founders Corp. in obtaining a license under the Scophony patents.

96 28. In or about June 1944 and continuing in 1945 the Bell and Howell Co. of Chicago, Illinois, important manufacturers of motion picture cameras and projectors, indicated an interest in obtaining a nonexclusive license in the United States under the Scophony patents. The "B" directors did not approve a nonexclusive license to Bell & Howell and the modifications in the basic agreement which would be necessary. Scophony, Limited, was advised of the interest of Bell & Howell in obtaining a license under the Scophony patents.

29. In or about June 1944 the auditors for SCA, Barrow, Wade & Guthrie, recommended that the basic agreements between the corporate defendants be modified so that SCA's source of funds would not be restricted to royalty payments from the two exclusive licenses. The "B" directors, the representatives of the exclusive licensees, did not approve or act to carry out this recommendation. Scophony, Limited, was advised of Barrow, Wade & Guthrie's recommendation.

30. During 1944 and 1945, Arthur Levey engaged in negotiations with various financial groups, including Blyth & Co. These negotiations contemplated modifications in the basic agreements between the corporate defendants whereby stock in SCA could be sold to the investing public. Funds would thus be made available to SCA for the manufacture of products under the Scophony inventions, as well as for further development work. The "B" stockholders, the exclusive licensees, did not approve or facilitate any of these new financial proposals. Scophony, Limited, was advised about these negotiations.

31. On December 1, 1944 the "A" directors on the board of SCA, including Arthur Levey, cabled Bonham-Carter that in view of negotiations then in progress which contemplated modifications in the basic agreements between the corporate defendants, it might be advisable for Scophony, Limited, to engage independent counsel in New York City to represent it in such negotiations.

(see E D, Ex. 7). In a cable dated December 8, 1944
97 Bonham-Carter cabled Levey that Scophony, Limited,
was satisfied that

You as Director can represent British Company (Ed. Ex. 8).
In a letter dated December 14, 1944, Bonham-Carter wrote to Otto
Augstein, a minority stockholder in SCA, that Scophony, Limited,
had advised Arthur Levey that "he could continue to represent us
as at present" (ED, Ex. 15).

32. In or about March 1945, W. G. Elcock, on behalf of Sco-
phony, Limited, requested Robert Boothby, an English member
of Parliament who was then in the United States, to investigate
the impasse in the affairs of SCA and to recommend how it might
be overcome. In his cable to Boothby dated March 24, 1945, Elcock
stated in part:

"We desire in every way assist Levey who is Director and Rep-
resentative British Parent Company (ED, Ex. 5).

33. In or about July 1945, Scophony, Limited, requested Comm.
Arthur Mallet, an Englishman who was then in the United States,
to investigate into the difficulties within SCA.

34. In or about March 1945, Scophony, Limited, accepted the
recommendation of Arthur Levey that James Lawrence Fly, for-
merly the Chairman of the Federal Communications Commission
but then in private practice, be retained as counsel for the "A"
stockholders in SCA in order that he might assist, support, and
advise Arthur Levey in the disputes within the Board of SCA
and in the negotiations that were in progress, which were seeking
to settle these difficulties and which included consideration of
modifications in the basic agreements between the corporate de-
fendants. In order to assist Arthur Levey and J. L. Fly in these
difficulties and negotiations Scophony, Limited, gave Arthur
Levey an irrevocable power of attorney dated March 26, 1945,
which expired on September 30, 1945 (ED, Ex. 10). After Sep-
tember 30, 1945, Scophony, Limited, gave a power of attorney to
J. L. Fly which empowered him to act on behalf of Sco-
98 phony, Limited, in the negotiations that he was conducting
with the owners of the "B" stock, which included contem-
plated changes in the basic agreement between the corporate
defendants.

35. Scophony, Limited, gave W. G. Elcock an irrevocable power
of attorney dated March 14, 1945, which gives him complete power
to act with regard to Scophony, Limited's interest in the United
States, including its interest in Scophony Corporation of America.
This power of attorney is irrevocable for one year from the date
thereof (E D, Ex. 4). Elcock arrived in the United States on
March 24, 1945, and for a period of almost two months thereafter
he has been engaged in continual negotiations to remove the im-

passé within the affairs of SCA and these negotiations contemplated modifications in the basic agreements which were set forth as Exhibits 1, 2, and 3 of the complaint herein.

36. At least from 1940 until the institution of this action against the named defendants on December 18, 1945, Scophony, Limited, has been engaged in continual activities and correspondence with representatives in the United States relating to the establishing and improving of its patent position. From 1940 until the transfer in July 1942 of its patent rights to SCA, Scophony, Limited, had engaged patent counsel within the United States to apply for and to obtain patents for the Scophony inventions within the United States. The agreements set forth as Exhibits 1, 2, and 3 to the complaint provide that there shall be a continuous interchange of patent information and technical data between Scophony, Limited, in the Eastern Hemisphere and SCA in the Western Hemisphere. Such exchange of patent information and correspondence relating thereto has in fact continually occurred between Scophony Corporation of America and Scophony, Limited (E. g., E D. Ex. 16 & 17). As long as the basic agreements set forth as Exhibits 1, 2, and 3 to the complaint continue in full force and effect, patent information and technical data and correspondence relating thereto are required to be transmitted between the parties to those agreements, including Scophony, Limited, and SCA.

99 37. Since the creation of Scophony Corporation of America, pursuant to the agreements set forth as Exhibits 1, 2, and 3 to the complaint and the division of world markets and activities provided for therein, there have been several occasions wherein Scophony, Limited, has requested SCA to obtain for Scophony, Limited, certain materials and equipment within the United States. SCA has acted as the agent of Scophony, Limited, in obtaining such material and equipment in the United States for shipment to Scophony, Limited, in London, England. If the agreements set forth in Exhibits 1, 2, and 3 to the complaint remain in full force and effect, and especially now that World War II has ended, it must be assumed that similar requests for material and equipment within the United States will continue to be made by Scophony, Limited, to Scophony Corporation of America and that the latter will continue to act as purchasing agent for Scophony, Limited, for such material and equipment within the United States.

38. Prior to July 1942, Barrow, Wade & Guthrie, certified public accountants and auditors in the United States, were retained by Scophony, Limited, to examine into the accounts of its representatives in the United States. The agreement set forth in Exhibit 1 to the complaint herein specifically provides for the delivery

of \$15,000 to Barrow, Wade & Guthrie to be used to pay Scophony, Limited's, creditors in the United States. It is my understanding that Barrow, Wade & Guthrie has continued and continues to hold funds in the United States on behalf of and to the account of Scophony, Limited.

Wherefore, it is respectfully requested that the court order:

(1) That the motion by defendant Scophony, Limited, dismiss the above-entitled action as against said defendant is denied; and

100 (2) That plaintiff be granted such other and further relief as may be proper in the premises.

Joseph B. Marker.

JOSEPH B. MARKER.

Subscribed and sworn to before me this sixteenth day of May 1946.

Jean Walićki,
JEAN WALICKI,

Notary Public, Queens County No. 3014.

(Acknowledgments of service omitted.)

102 [File endorsement omitted.]

104 United States District Court, Southern District of
New York

Civ. 34-184

UNITED STATES OF AMERICA, PLAINTIFF
v.

SCOPHONY CORPORATION OF AMERICA; SCOPHONY, LIMITED; ET AL.
DEFENDANTS

Opinion

Filed Oct. 30, 1946

Appearances: Edwin Foster Blair, Esquire, Attorney for Defendant Scophony, Limited, Appearing specially; Joseph B. Marker, Esquire, Special Attorney, Attorney for United States of America; Simpson, Thacher & Bartlett, Esquires, Attorneys for Defendants Television Productions, Inc., Paramount Pictures, and Paul Raibourn; Mudge, Stern, Williams & Tucker, Esquires, Attorneys for Defendants Earl G. Hines and General Precision Equipment Corporation; Joseph O. Ollier, Esquire, Attorney for Defendants Arthur Levey and Scophony Corporation of America.

EDWARD A. CONGER, U. S. D. J.:

105 The Defendant, Scophony, Limited, moves to quash service of process and dismiss the complaint herein upon the ground that it is a corporation organized under the laws of Great Britain, not subject to the jurisdiction of this Court.

The action is brought pursuant to Section 4 of the Sherman Anti-Trust Act (15 U. S. C. A. § 4), against five corporate defendants, including the movant, and three individuals to restrain continuing violations of Sections 1 and 2 of the Act (15 U. S. C. A. § 1 and 2). The complaint charges the defendants with combining and conspiring to monopolize and restrain interstate and foreign trade in products, processes, patents and inventions useful in television and allied industries.

Service of process was effected in New York City on December 20, 1945 by leaving a copy of the summons and complaint with defendant Arthur Levey, who is a Director of Scophony, Limited. On April 5, 1946 one W. G. Elcock, also a Director of Scophony, Limited, was served while visiting this country.

106 Section 12 of the Clayton Act (15 U. S. C. A. § 22), pursuant to which venue is established and jurisdiction acquired in suits of this type, provides as follows:

"Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; *and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.*" *[Italics added.]*

It may be noted that the emphasized portion of the section relating to jurisdiction is concerned here; and the main problem is, therefore, whether the defendant, Scophony, Limited, not being an "inhabitant" of this district, is "found" here.

Although there have been numerous decisions rendered in application of this section, the great majority of them relate to domestic corporations (corporations organized within the United States) rather than alien corporations, as here.

107 Recently, Judge Leibell of this Court considered the instant problem in a suit analogous to the present one (U. S. v. U. S. Alkali Export Association, et al., decided July 16, 1946), and he held that a British corporation which owned the entire capital stock of an American corporation functioning within the jurisdiction of this Court was "found" here within the meaning of Section 12. He concluded that the activities of the American corporation on behalf of the parent company warranted the finding that the former was merely an "agency subsidiary" of the British company.

In general, a corporation is "found" within a given jurisdiction if it there does business "of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state or district where service is attempted." *Peoples Tobacco Co. v. American Tobacco Co.*, 246 U. S. 79, 87; *U. S. v. Aluminum Co. of America* (D. C. N. Y., 1937), 20 Fed. Supp. 13; *Haskell v. Aluminum Co. of America* (D. C. Mass., 1926), 14 Fed. (2d) 864. An examination of the cases indicates that the concept expressed as "found" is identical with the more familiar "doing business."

108 The Affidavit submitted by the Government in opposition to this motion contains a detailed statement of the various activities of movant in this jurisdiction. Much of this activity occurred prior to the signing of the so-called "basic agreements" with the other defendants in 1942.

Defendant Scophony, Limited, (hereinafter referred to as "Limited") has its office in the City of London, England. It is in the business of manufacturing and selling television apparatus and is the owner and licensor of inventions purporting to cover, among other things, television reception and transmission systems.

In the spring of 1939, Limited manufactured and placed on the market in England several commercial television sets. After the outbreak of the war with Germany in September 1939, the British Broadcasting Corporation stopped the television broadcasts.

109 In 1940, Limited sent some of its personnel and various television equipment to this country; it maintained an office in New York City from 1940 to 1941; it demonstrated its product here; it leased one of its television sets to a theatre company as a result of which a set was installed in the Rialto Theatre in New York City. In general, Limited was actively engaged in placing its product in the American market, inasmuch as the English market was closed to it because of the war. In those early years, 1940 and 1941, and perhaps for part of 1942, Limited's business here was of such a character that one might very well infer that it had subjected itself to the local jurisdiction and was present here at that time by its duly authorized agents upon whom service of process could be made.

Unless there was a continuity of such activities down to the present, however, such course of conduct is of no aid in the determination of this motion. What we are interested in is the business conduct of this defendant in this jurisdiction at the time process in this action was served upon it or within a reasonable time before that.

There is no question but that these business activities
 110 which I have referred to ceased prior to the time this
 defendant entered into the "basic agreements."

These agreements were executed on July 31, 1942 and August
 11, 1942. In substance, they provided for the creation of a new
 corporation, the Scophony Corporation of America (hereinafter
 called "SCA"), to which Limited sold all its equipment within
 the United States, and all its present and future patents. SCA,
 in turn, gave exclusive licenses for the manufacture and sale of
 products under the Scophony inventions in the Western Hemis-
 sphere to defendants General Precision Corporation and Tele-
 vision Products, Inc. The exclusive licensees agreed to pay roy-
 alties to SCA on all products that they might produce under the
 Scophony inventions, and SCA agreed to transmit to Limited
 fifty percent of all royalties that it received from the licensees.

The capital structure of the new corporation, SCA, was to con-
 sist of 1,000 "A" shares and 1,000 "B" shares. The "B" shares
 were allotted to the American interests, General Precision
 111 Equipment Corporation and Television Productions, Inc.,
 a wholly owned subsidiary of Paramount Pictures, Inc.
 The "A" shares were allotted to the British interests, principally
 Limited.

The "A" shares are entitled to elect three-fifths of the Board of
 Directors of SCA and to elect the President, Vice-President, and
 Treasurer of the new corporation. Since the creation of SCA the
 representatives of the "A" shares have been elected by Limited.

The "B" shares are entitled to elect two-fifths of the Board of
 Directors of SCA and also the Secretary and Assistant Secretary.

The Government contends that these agreements provide for
 the division of world markets in the products covered by the
 Scophony inventions, particularly those relating to television.
 Limited retained the Eastern Hemisphere, including England, as
 its exclusive territory for the manufacture and sale of products
 covered by Scophony inventions.

The Western Hemisphere, including the United States,
 112 became the exclusive territory of SCA or its two exclusive
 licensees for the manufacture and sale of products under
 the Scophony inventions.

It is apparent from these provisions that Limited exerted the
 major control over SCA. Defendant Levey, who is President
 and a Director of the American Corporation is also a Director
 of Limited.

However, it is well settled that a parent corporation does not
 "do business" in a given jurisdiction merely because of the presence
 there of its subsidiary without some further factual basis for con-

cluding that the parent has injected itself into the jurisdiction by its conduct in relation to the subsidiary, or that the subsidiary is acting solely as an agent, as was the situation in *U. S. v. U. S. Alkali*, supra. *Cannon Mfg. Co. v. Cudahy Co.*, 267 U. S. 330; *Consolidated Textile Corp. v. Gregory*, 289 U. S. 85; *Amtorg Trading Corp. v. Standard Oil Co. of Cal.* (D. C. N. Y. 1942), 47 Fed. Supp. 466; *American Fire Prevention Bureau v. Automatic Sprinkler Co. of America* (D. C. N. Y. 1941), 42 Fed. Supp. 220.

And there is no evidence, except possibly for the fact that

113 Limited received fifty percent of the royalties earned by SCA, that SCA stood any differently than any ordinary subsidiary corporation, nor is there any indication that it acted merely as an agent for Limited. It is true that SCA did act for Limited in the purchase of certain materials and equipment in the United States, but it appears from the papers that this occurred on occasion, and not as a frequent and common practice of SCA.

The Government asserts that Limited is "found" here by reason of the activities of its agents, especially Levey, and others.

Levey was the prime negotiator for Limited of the "basic agreements" to which the Government has directed its attack. He consulted with Limited with respect to the proposed modifications of the "A" stock allocations, and which proposals resulted in the new allocations set forth in the agreement of February 4, 1943, whereby Limited received two-thirds of the "A" shares. He kept Limited advised about the negotiations with regard to the employment by SCA of an inventor, Dr. Rosenthal. He carried

out instructions and kept Limited advised in connection
114 with the disputes which subsequently ensued between the "A" and "B" Directors. In order to assist him in resolving these difficulties, Limited gave him a power of attorney, dated March 26, 1945, authorizing him to vote Limited's shares in SCA.

Numerous others were authorized by Limited to act in its behalf in these disputes, including W. G. Elcock, who travelled to this Country for the purpose, James L. Fly and John Sloan, attorneys, Robert Boothby, a British member of Parliament and Commander Arthur Mallet, an English officer.

While a successful settlement of these disputes might inure to the benefit of Limited, still the disputes were concerned with the conduct of the business of SCA and not that of Limited.

Assuming the truth of the allegations in the complaint with respect to Limited's business, i.e., that it is engaged in the manufacturing, selling, and licensing of television apparatus, it would seem that none of the activities of Limited's agents were concerned with the ordinary business of Limited. These agents

115 were engaged in protecting the interests of their principal in SCA.

The Government finally argues that the conduct required to hold an alien corporation under Section 12 may vary from that required to hold a foreign corporation. If by this the Government means that there is one rule which applies to alien corporations and another to foreign corporations it is clearly in error. The cases cited by the Government do not support this theory. All of them where pertinent apply the rule as I have heretofore stated it, and make no such distinction, nor do any of the other cases which I have read.

I am not unmindful of the effect of my holding here. However, that cannot determine my judgment. I cannot make the rule to fit the case. I can only apply the rule to the facts and having done so announce the result.

This I have done, and although the result may be unfortunate as far as the Government is concerned, I can only conclude that Limited was not found within the jurisdiction of this Court at the time of service of process, and the motion to quash the
116 service and dismiss the complaint must be granted.

Submit order on notice.

Dated October 30, 1946.

EDWARD A. CONGER,
United States District Judge.

117 In the District Court of the United States.

[Title omitted.]

Notice of proposed final order

Filed Nov. 8, 1946.

SIRS: Please take notice that an order of which the within is a true copy will be presented for settlement and entry herein to Honorable Edward A. Conger, United States District Judge, at the offices of the Clerk of this Court, located at Foley Square, Borough of Manhattan, City of New York, on the 7th day of November 1946, at 10:30 o'clock in the forenoon.

Dated New York, November 5, 1946.

Yours, etc.,

JAMES C. WILSON,
*Special Assistant to the Attorney General, Attorney for
the United States of America, Office and Post Office
Address: 14th Floor, 30 Broad Street, New York 4,
New York.*

To:

EDWIN FOSTER BLAIR,
Attorney for Scophony, Limited,
20 Exchange Place, New York, N. Y.
 SIMPSON, THACHER & BARTLETT,
Attorneys for Television Productions, Inc.,
Paramount Pictures, and Paul Raibourn.
 MUDGE, STERN, WILLIAMS & TUCKER,
Attorneys for Earl G. Hines and
General Precision Equipment Corporation.
 JOSEPH O. OLLIER,
Attorney for Arthur Levey and Scophony
Corporation of America.

118 In the District Court of the United States

[Title omitted.]

Proposed Order

Filed Nov. 8, 1946

Motions having been made on behalf of the defendant Scophony, Limited, in the above-entitled action for orders (1) to dismiss the action as to said defendant on the ground that the Court lacks jurisdiction over said defendant and that the purported process and the purported service thereof are insufficient to vest jurisdiction in the Court; and (2) to dismiss the action as to said defendant, or in lieu thereof to quash the purported process and service of process herein as to said defendant on the ground that the Court lacks jurisdiction of the person of said defendant and on the further ground that the purported process issued herein and the purported service thereof are insufficient to vest jurisdiction in the Court; and

Upon reading the pleadings herein and upon reading and filing the notice of motion dated May 10, 1946, the affidavit of W. G. Elcock verified on the 9th day of May 1946, in support of the said motions, and the affidavit of Joseph B. Marker verified on the 16th day of May 1946, in opposition thereto; and

119 After hearing Edwin Foster Blair, Esq., attorney for the defendant Scophony, Limited, appearing specially, in support of said motions, and Joseph B. Marker, Esq., attorney for the plaintiff The United States of America, in opposition to said motions, and

After due deliberation thereon by the Court, and the Court having filed its opinion dated October 30, 1946, it is

Now, on motion of Edwin Foster Blair, attorney for defendant Scophony, Limited, appearing specially,

Ordered that the aforesaid motions of defendant Scophony, Limited, are granted to the extent that purported service on said defendant of the process issued herein is quashed, and said motions of defendant Scophony, Limited, are in all other respects denied.

Dated New York, November 7th, 1946.

United States District Judge.

(Acknowledgments of service omitted.)

120 Not signed. This order does not conform with my opinion. E. A. C.

[File endorsement omitted.]

121 In the District Court of the United States

[Title omitted.]

Notice of proposed final order

Filed Nov. 8, 1946

SIRS: Please take notice that an order of which the within is a true copy will be presented for settlement and entry herein to Honorable Edward A. Conger, United States District Judge, at the offices of the Clerk of this Court, located at Foley Square, Borough of Manhattan, City of New York, on the 7th day of November 1946, at 10:30 o'clock in the forenoon.

Dated New York, November 4, 1946.

Yours, etc.,

EDWIN FOSTER BLAIR,
*Attorney for defendant,
Scophony, Limited, Ap-
pearing Specially, Office
and P. O. Address: 20
Exchange Place, Bor-
ough of Manhattan,
New York, N. Y.*

To:

JOSEPH B. MARKER,
*Special Attorney,
Attorney for United States of America.*

SIMPSON, THACHER & BARTLETT,
*Attorneys for Television Productions, Inc., Paramount
Pictures, and Paul Railbourn.*

66 UNITED STATES VS. SCOPHONY CORP. OF AMERICA ET AL.

122 MUDGE, STERN, WILLIAMS & TUCKER,
*Attorneys for Earl G. Hines and General
Precision Equipment Corporation.*

JOSEPH O. OLLIER,
*Attorney for Arthur Levey and Scophony Corporation
of America.*

123 In the District Court of the United States for the Southern
District of New York

Civil Action No. 34-184

UNITED STATES OF AMERICA, PLAINTIFF

v.

SCOPHONY CORPORATION OF AMERICA; GENERAL PRECISION EQUIP-
MENT CORPORATION; TELEVISION PRODUCTIONS, INC.; PARAMOUNT
PICTURES, INC.; SCOPHONY LIMITED; ARTHUR LEVEY, EARLE G.
HINES; AND PAUL RAIBOURN, DEFENDANTS

Order and judgment

Nov. 8, 1946

Motions having been made on behalf of the defendant Scophony, Limited in the above-entitled action for orders (1) to dismiss the action, as to said defendant on the ground that the Court lacks jurisdiction over said defendant and that the purported process and the purported service thereof are insufficient to vest jurisdiction in the Court; and (2) to dismiss the action as to said defendant, or in lieu thereof to quash the purported process and service of process herein as to said defendant on the ground that the Court lacks jurisdiction of the person of said defendant and on the further ground that the purported process issued herein and the purported service thereof are insufficient to vest jurisdiction in the Court; and

Upon reading the pleadings herein and upon reading and filing the notice of motion dated May 10, 1946, the affidavit of W. G. Elcock verified on the 9th day of May 1946, in support of the said motions, and the affidavit of Joseph B. Marker verified on the 16th day of May 1946, in opposition thereto, and

124 After hearing Edwin Foster Blair, Esq., attorney for the defendant Scophony, Limited, appearing specially, in sup-

port of said motions, and Joseph B. Marker, Esq., attorney for the plaintiff The United States of America, in opposition to said motions, and

After due deliberation thereon by the Court, and the Court having filed its opinion dated October 30, 1946, it is

Now, on motion of Edwin Foster Blair, attorney for defendant Scophony, Limited, appearing specially,

Ordered that the motion of defendant Scophony, Limited, to quash the service and dismiss the complaint be, and the same hereby is, in all respects granted.

Dated New York, November 7th, 1946.

EDWARD A. CONGER,
United States District Judge.

Judgment Rendered. William V. Connell. Nov. 8, 1946.

126

In the District Court of the United States

[Title omitted.]

Petition for appeal

Filed Jan. 7, 1947

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final order and decree of this Court entered on the 8th day of November 1946, does hereby pray an appeal from said final order and decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignments of error and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final order and decree was based, duly authenticated, be sent to the Supreme Court of

the United States under the rules of said Court in such cases made and provided.

Wendell Berge,
WENDELL BERGE,
Assistant Attorney General.

James C. Wilson,
JAMES C. WILSON,
Special Assistant to the Attorney General.

This 6 day of January 1947.

128 In the District Court of the United States

[Title omitted.]

Order allowing appeal

Filed Jan. 7, 1947

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final order and decree of this Court in this cause entered on the 8th day of November 1946, and having also made and filed its assignments of error and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided.

It is therefore ordered and adjudged

That the appeal be and the same is hereby allowed as prayed for.

EDWARD A. CONGER,
U. S. District Judge.

This 6th day of January 1947.

130 In the District Court of the United States

[Title omitted.]

Assignment of errors and prayer for reversal

Filed Jan. 7 1947

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry in the district court on November 8, 1946, of the final decree as to Scophony, Limited, in the above-

entitled cause, and says that in the entry of the final decree the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in holding that Section 12 of the Clayton Act applies to alien corporations.

2. The court erred in holding that Section 12 of the Clayton Act has the same meaning when applied to an alien corporation as when applied to a nonresident domestic corporation.

3. The Court erred in holding that Scophony, Limited, was not transacting business in the Southern District of New York through Scophony Corporation of America as its agent such as would bring Scophony, Limited, within said District for purposes of suit
131 against it and service of process upon it.

4. The court erred in holding that Scophony, Limited, was not transacting business in the Southern District of New York through Arthur Levey and other individual agents such as would bring Scophony, Limited, within said District for purposes of suit against it and service of process upon it.

5. The court erred in entering a final judgment dismissing the complaint as to Scophony, Limited.

6. The court erred in entering a final judgment quashing service of process as to Scophony, Limited.

Wherefore, plaintiff prays that the final decree of the district court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as the court may deem just and proper.

JAMES C. WILSON,

Special Assistant to the Attorney General.

This 6th day of January 1947.

133 [Citation in usual form, filed Jan. 8, 1947, omitted in printing.]

135 In the District Court of the United States

[Title omitted.]

Proof of service

Filed Jan. 8, 1947

Service of the petition for appeal, order allowing appeal, assignment of errors and prayer for reversal, statement of jurisdiction with opinion attached, and citation in the above-entitled cause, together with a statement directing attention to the pro-

visions of paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, is accepted and copies received this 7th day of January 1947.

Edwin Foster Blair,
EDWIN FOSTER BLAIR,
Attorney for Defendant, Scophony, Limited.

Simpson, Thacher & Bartlett,
SIMPSON, THACHER & BARTLETT,
*Attorneys for Television Productions,
Inc., Paramount Pictures, and Paul Raibourn.*

Mudge, Stern, Williams & Tucker,
MUDGE, STERN, WILLIAMS & TUCKER,
*Attorneys for Earl G. Hines and
General Precision Equipment Corporation.*

Joseph O. Ollier,
JOSEPH O. OLLIER,
*Attorney for Arthur Levey and
Scophony Corporation of America.*

137 [Clerk's Certificate to foregoing transcript omitted in printing.]

1 In the District Court of the United States for the Southern District of New York

Civil Action No. 34-184

UNITED STATES OF AMERICA, PLAINTIFF

v.

SCOPHONY CORPORATION OF AMERICA; GENERAL PRECISION EQUIPMENT CORPORATION; TELEVISION PRODUCTIONS, INC.; PARAMOUNT PICTURES, INC.; SCOPHONY, LIMITED; ARTHUR LEVEY; EARLE G. HINES AND PAUL RAIBOURN, DEFENDANTS

Examination of William George Elcock at the office of the Anti-Trust Division of the Department of Justice, 30 Broad Street, New York, N. Y., on April 25th and April 26th, 1946.

Appearances: Joseph B. Marker, Esq., Special Attorney, and Mervin C. Pollack, Special Assistant to the Attorney General, of counsel for the Government. E. F. Blair, Esq., 20 Exchange Place, N. Y. C., Attorney for William George Elcock, individually. Mudge, Stern, Williams & Tucker, Esqs., 20 Pine Street, New York, N. Y., Attorneys for General Precision Equipment Corporation and Earle G. Hines, by H. G. Pickering and Elvis J. Stahr,

2 Jr., of counsel. Simpson, Thacher & Bartlett, Esqs., 120 Broadway, New York, N. Y., Attorneys for Television Productions, Inc., Paramount Pictures, Inc. and Paul Raibourn, by Francis X. Fallon, Jr., Esq., of Counsel. Joseph O. Ollier, Esq., Attorney for Scophony Corporation of America and Arthur Levey, by Hays, St. John, Abramson & Schulman, Esqs., 120 Broadway, New York, N. Y., James R. Cherry, Esq., of Counsel.

Examination of WILLIAM GEORGE ELCOCK, pursuant to an order of this court, commencing on the 25th day of April 1946, at 10:30 a.m., at the office of the Anti-Trust Division of the Department of Justice, 30 Broad Street, New York City, N. Y., before Philip Hart, a Notary Public of the State of New York, in and for the County of New York, Southern District of New York, and a certified shorthand reporter, and continuing April 26, 27, and 29, 1946.

3 Mr. PICKERING. I appear for General Precision Corporation and Earle G. Hines, two of the defendants herein; without prejudice to any rights which we may have by reason of the fact that we did not receive any notice of the order of the examination or the entry thereof, and that their proposed order served upon us fixed no time for the examination.

Mr. FALLON. We appear for Television Productions, Inc., and Paramount Pictures, Inc., and Paul Raibourn, three of the defendants herein. We object first on the ground that the order providing for this examination did not specify the hour at which the examination is to take place; and further, on the ground that any testimony given by the witness is incompetent, irrelevant, and immaterial, and not binding upon the defendants, Television Productions, Inc., Paramount Pictures, Inc., or Paul Raibourn, the defendants we represent.

4 Mr. BLAH. I would like to state that Scophony, Limited, is not being represented at this hearing. As the record of the case shows, I have appeared specially for Scophony, Ltd., but I am not appearing in that capacity today, or in any other capacity as counsel for Scophony, Ltd. I am appearing solely as personal counsel to Mr. Elcock as an individual, and in no other capacity.

Mr. MARKER. I take it that all the opening statements of counsel have been given to the stenographer.

WILLIAM GEORGE ELCOCK, the witness, testifies as follows:
(The witness states that his residence is 68 Great Cumberland Place, London, W. 1, England.)

Direct examination by Mr. MARKER:

Q. Mr. Elcock, when did you arrive in the United States?

A. On Sunday, March 24th.

Q. How long do you expect to remain in the United States?

A. I have to leave on Wednesday next, for Canada.

Q. Mr. Elcock, you are an official of Scophony, Ltd., are you not?

A. Yes.

Q. Would you state in full, please, your exact position with and connection with Scophony, Ltd.?

A. I am a financial comptroller and director.

Mr. FALLON. Is that a what?

The WITNESS. A financial comptroller and director.

Q. Mr. Elcock, you have entered into certain agreements with Scophony, Ltd., have you not?

A. As financial comptroller: yes.

Q. At least as regards being financial comptroller?

A. Yes.

Q. Have you entered into other agreements in connection with Scophony, Ltd.?

A. I had an agreement whereby I had a mortgage on the company, but that, I understand, has been discharged in my absence. I cannot give you any details.

Q. As to the discharge?

A. Yes.

Q. But you could give us details as to the mortgage?

A. As to the mortgage; yes.

Q. Would you state when you first became associated with Scophony, Ltd., please?

A. Remember, I am without any documents here, and I cannot quote exact dates, and all my papers are in England; to tell you exactly what date, but I believe on or about December 1941, I took over a charge from a previous borrower in the sum of 20,000 pounds.

Q. When you say you "took over," exactly what do you mean?

A. There was an existing form of charge and it was assigned to me when I paid up the previous loan, and I advanced the money whereby the previous loan was paid off.

Q. And the best date you can give as to that at this time is December 1941?

A. December 1941.

Q. That was your first contact with Scophony, Ltd.?

A. No. There had been negotiations going on for about three months before that, with a view to my lending them some money.

Mr. MARKER. I now offer as a Government exhibit for identification, a document which purports to be minutes of the Board of

Directors of Scophony, Ltd., on October 21, 1941, at London, England.

(Minutes referred to marked "Government's Exhibit No. 1" for identification.)

(Consisting of two sheets.)

(Exhibit shown to counsel.)

7 Q. Mr. Elcock, now, from an examination of Government's Exhibit No. 1, it appears that you were associated with Scophony, Ltd., at least on October 21, 1941?

A. Yes.

Q. The minutes refer to W. G. Elcock appearing as alternate director for Mr. Oscar Deutsch.

A. Yes.

Mr. PICKERING. Is it the Government's intention to offer this document in evidence?

Mr. MARKER. Not at this time.

Mr. PICKERING. I mean, at the trial?

Mr. MARKER. We may.

Mr. PICKERING. I think I should make an objection at this time. I object to the Government's Exhibit No. 1 as incompetent, not properly authenticated. I object to it on the basis of its contents as being irrelevant and immaterial, and I object to any communication of the witness with respect to the document until it has been authenticated and offered and received in evidence.

Mr. FALLON. I join in Mr. Pickering's objections.

8 Mr. MARKER. The stenographer will note the objections and we will proceed.

Q. The document, Mr. Elcock, refers to you as alternate director for Mr. Oscar Deutsch, and I will ask you again to explain who Mr. Oscar Deutsch was.

A. Mr. Deutsch was a director of Scophony, Ltd.

Mr. PICKERING. May the record show, so that I will not have to interrupt, that my objections are continuing as to all of the examination of Mr. Elcock with respect to Government's Exhibit 1 for identification.

Mr. FALLON. Mine are also continuing objections.

Q. So this is the first time you served as alternate director for Mr. Deutsch?

A. I cannot answer that. I cannot remember.

Q. Do you recall the occasion for which you at this time appeared for him as his alternate?

A. Do I recall any occasion? No. But after you have reminded me of that—I would not have remembered that that occurred—it was on a specific matter.

9 Q. The minutes, now, Mr. Elcock, state that the company sold its plant, machinery, and other equipment to you for the price of 10,000 pounds, was that in fact accomplished?

A. No.

Q. It was not?

A. No.

Q. Why not?

A. Because I do not know whether it was a full board; but after reconsideration the directors did not go on with that scheme.

Q. So that that portion of the minutes was not carried out?

A. No.

Q. The minutes go on to state that you were to loan the company the sum of 10,000 pounds. Was that in fact carried out?

A. No.

Q. It was not?

A. No. I took an assignment of the debt, as I stated previously.

Q. You took an assignment for a previous debt?

A. Of a previous charge.

Q. Will you explain the nature of the previous charge, please?

10 A. The money had originally been lent to the company by the National Provincial Bank on ordinary bank form of mortgage. That had subsequently been assigned to E. K. Cole, Ltd., referred to in the minutes, and then was later assigned to me.

Q. For that assignment did you pay the sum of 10,000 to the assignee?

A. The charge was 20,000 pounds, and I paid 20,000 pounds plus any outstanding interest.

Q. The minutes also refer to an existing mortgage which would be transferred to you as a continuing security for the loan or assignment that you have now referred to. Was that mortgage in effect transferred over to you?

A. Yes.

Q. Is that mortgage still in effect?

A. I can't say since I have been here. I believe the company knows that the company has since paid me back 20,000 pounds; but whether it has been endorsed with a discharge, I can't tell you.

Q. At the time you left England that mortgage was still in effect; is that correct?

A. Yes.

11 Q. And the loan was still outstanding?

A. Yes.

Q. The minutes continue to state that a management agreement be entered into between the company and Mr. Elcock. Was that agreement in fact entered into?

A. No. It was called a financial comptroller agreement.

Q. It was called a financial comptroller agreement?

A. Yes.

Q. Do you know the date of that agreement?

A. No.

Q. The approximate date?

12 A. I would say about October 1942; but I can't say definitely.

Q. A year after this Minute?

A. Yes.

Q. Will you please explain the reason for the lapse of one year between the taking of these minutes and the entry into that agreement?

A. There were a lot of negotiations going on and it took the solicitors of the various parties that time to agree. I must not accept the exact date; but it took a considerable time afterwards before it was settled. I can cable to England; but you must not try to ask me to remember back all these years.

Q. Of course, we want you to give your best recollection at this time. You said that it was not a management agreement, but in the nature of a financial controller's agreement?

A. Yes.

Q. Will you please explain the terms and nature of that agreement?

Mr. FALLON. I object.

Mr. PICKERING. I object to that as not the best evidence.

Mr. FALLON. I join in that objection.

Mr. MARKER. The objection will be noted.

13 Q. Will you please state your understanding of that agreement?

Mr. BLAIR. I object to that, Mr. Marker. I do not think this witness ought to be called upon to try to explain the terms of a document, if there were such a document, or the terms of an agreement. I do not think he is competent to testify and I object.

Mr. MARKER. I will rephrase the question.

Q. Mr. Elcock, will you explain the terms of your financial controller's agreement with Scophony Ltd.

Mr. FALLON. Same objection.

Mr. PICKERING. The same objection.

Q. Mr. Elcock, is this financial controller's agreement in force at the present?

A. Yes.

Q. It is now in operation?

A. Yes.

Q. Will you please explain that arrangement?

Mr. PICKERING. Same objection.

Mr. POLLACK. He has asked what his arrangement with the company is.

14 Mr. PICKERING. This evidence shows that the arrangement is embodied in a written document which has not been offered in evidence and I object to any testimony as to what that arrangement is as not the best evidence.

Mr. MARKER. The stenographer will note the objection and Mr. Elcock will proceed to answer the question.

Mr. BLAIR. I object on the ground that it is not the best evidence.

Mr. MARKER. Mr. Blair, I refer to Rule 30 of the Federal Rules of Civil Practice, which states that the objection will be noted and we will proceed with the questions and answers.

Mr. FALLON. To clarify the record, may it be noted and understood, Mr. Marker, that unless otherwise stated I join in any objections made by Mr. Pickering, so that the two of us will not speak at once and confuse the reporter.

Mr. MARKER. The reporter will so note.

Mr. PICKERING. Since there has been a reference to the rules, I understand that we are obliged to object on such an examination to any question which you might be able to amend and
15 correct the objections before trial or on this examination so that you will not be caught short on the trial and have notice of it and that is the purpose of my objection.

Q. Now, Mr. Elcock, I ask you, will you please state the terms of your financial comptroller agreement with Scophony, Ltd.?

Mr. PICKERING. I assume that question is subject to the previous objections.

Mr. MARKER. Yes.

A. It is for a period of ten years. It carries with it remuneration scaled on a percentage of profit, with a minimum of a thousand pounds a year.

Q. Does that agreement provide that you operate the company in any particular manner?

A. No.

Q. Does it provide your powers in connection with the operation of the company?

A. It does not appoint me to devote any set time to the company. It is completely at my own choosing what I do.

Q. What are your powers under that agreement in relation to the activities of Scophony, Ltd.?

16 A. With at having the agreement before me, and it was drawn up some years ago, I have the power to deal with finance, decide on what shall be manufactured, and dictate the general policy of the company, subject always to the approval of the Board.

MR. FALLON. You are testifying now, Mr. Elcock, as to your recollection of the contents of the agreement?

THE WITNESS. Yes.

Q. Mr. Elcock, what powers in fact, have you exercised since you have been a financial Comptroller?

A. None.

Q. There has been no occasion for your acting as financial Comptroller?

A. I said—my answer was that I had never exercised any of the powers under the Financial Comptroller agreement.

Q. Mr. Elcock, has there been a management committee in connection with the operations of Scophony Ltd.?

A. There has not been an actual committee appointed, but the affairs of the company have in actual fact been administered by a committee of directors.

17 Q. How is that management committee constituted?

A. The chairman, Maurice Bonham Carter.

Q. You mean the Chairman of the Board of the Scophony, Ltd.?

A. Yes; and Charles Collins.

Q. Who is Charles Collins?

A. He is a director of the company and was a director to date.

Q. Did you have any connection with that management committee?

A. Occasionally.

Q. How often?

A. When I was available.

Q. About how frequently would that be?

A. Oh, every other month, possibly.

Q. Did the Financial Comptroller agreement or any other agreement between you and Scophony, Ltd., provide for your participation in or connection with the Management Committee?

MR. PICKERING. I object to that as not the best evidence and calling for the contents of the written document.

MR. MARKER. Note the objection, please.

18 A. I have no recollection.

Q. The Government Exhibit No. 1 for identification states that the manager shall appoint one nominee and that the nominee for the manager, Mr. Elcock, shall be Charles Collins. Was in fact Mr. Collins appointed to the Management Committee as your representative?

A. I don't know if there was a Management Committee appointed. I have already stated that.

Q. But the Management Committee that was in fact in existence; was Mr. Collins appointed as your representative?

A. Yes.

Q. He was?

A. Yes.

Q. Did he in fact report to you his activities in connection with that Management Committee?

A. No.

Q. Was he subject to your orders in connection with his activities with the Management Committee?

A. He would take my advice.

Q. Could you have removed him had you so desired?

A. I could not answer that. I do not remember the document, and there never was an occasion that it arose.

Q. But he did act on the Management Committee as your representative?

A. He was a director of the company independently of that and he was my representative.

Q. In connection with your last answer, in which you state that Mr. Collins was an independent director, is it not a fact that in the most recent meeting of the Board of Directors a resolution in connection with your agreement with Scophony, Ltd., was presented to the stockholders on the ground that Mr. Collins, being your nominee, could not, as a director of Scophony, Ltd., approve the agreement between him and the company?

Mr. PICKERING. I object to that as not the best evidence and calling for the contents of a written document which is not of record.

Mr. BLAIR. Furthermore, I think the witness testified that Mr. Collins—

Mr. MARKER. He has also answered that Mr. Collins was an independent director; and in connection with the independence of Mr. Collins, I state the official record in connection with the most recent meeting of the Board of Scophony, Ltd.

Q. And I repeat, was in fact the substance of the resolution presented to the stockholders of Scophony, Ltd., did it state that in view of the fact that Mr. Collins was not a disinterested party in connection with Mr. Elcock, that his approval of the agreement between the company and Mr. Elcock, that such agreements would now have to be re-ratified?

Mr. PICKERING. I repeat my objection.

Mr. BLAIR. Will you read it, please?

Q. Mr. Elcock, do you understand the substance and the nature of my question?

A. Which refreshes my recollection, the document which has not been put in evidence; and the answer is that the document has been submitted to the shareholders dealing with the words you quote.

Q. Mr. Elcock, I do not have to refresh your recollection to a document. When was the last meeting of the Scophony, Ltd?

A. On Friday before a sale, I believe the 12th of March.

21. If you will give me a calendar I will tell you.

(Mr. Pickering hands a calendar to the witness.)

Q. The approximate date was the 12th?

A. About the 12th of March; the 15th.

Q. March 15th?

A. Yes.

Q. Were you present at that meeting?

A. Yes.

Q. Was the substance of that meeting, at least part of the proceedings at that meeting, to effect the subject matter that I have questioned you about?

A. Yes in part.

Mr. PICKERING. I object to that as not the best evidence.

Mr. MARKER. The objection will be noted.

Q. Do you think that March 15th, 1946 is sufficiently recent for you to have a good recollection as to the proceedings that then occurred?

A. Yes.

Q. Will you now answer my question; would you want me to restate my question?

A. Yes; I would rather.

22. Q. Was the substance of that meeting that the agreements between you and Scophony, Ltd., were being resubmitted for the approval of the Board or of the stockholders of Scophony, Ltd., because of the fact that the prior agreements, the last agreements some years before, were defective because Mr. Collins was not a disinterested party as regards Mr. Elcock, and therefore could not, approve independently for the company an agreement between the company and Mr. Elcock.

Mr. BLAIR. I object to the form of the question.

Mr. PICKERING. I object to the form of the question. I also object to it because it is not the best evidence and I object to it because the agreements referred to therein are not sufficiently identified to make the question intelligible.

Mr. FALLON. I further object to it on the ground that it calls for a conversation of other people present at the meeting; and it is incompetent.

Mr. MARKER. Note the objection.

23. Q. Mr. Elcock, do you understand my question?

A. I think it would be better if the special resolution were read and I was asked to say whether that resolution was passed. You may be quoting certain words. It was a long resolution.

Q. I am not quoting from any document and, therefore, I am not holding you to any precise words. It is a question here of a general question. I am sorry that I do not make it clearer to you; but it seems to me that if you have a general question, it is a very simple question. Was Mr. Collins disqualified to pass upon your agreements with Scophony, Ltd., on the ground that his connection with you was such that he could not be treated as a disinterested or independent party?

Mr. PICKERING. I object to the question.

Mr. BLAIR. I object to that question; in the first place you are calling upon this witness who is a layman to give some expression of opinion as to a matter of law. I do not think that is a proper question.

Mr. PICKERING. I object. The question is too indefinite
24 to be intelligible. We do not know what agreements are being referred to, whether they are relevant or material or not cannot be determined.

Mr. MARKER. The objections will be noted.

Q. Mr. Elcock, do you still feel able to answer that question?

A. Yes; on those terms.

By Mr. POLLOCK:

Q. Mr. Elcock, there was a Board of Directors' meeting in March which you have just referred to?

A. That was an annual meeting of shareholders.

Q. Stockholders?

A. Yes.

Q. And in the course of that stockholders' meeting was there any discussion with respect to any agreements which you may have had with Scophony, Ltd.?

A. There was no discussion. Special resolutions were submitted to the shareholders dealing with points needing clarification and those special resolutions were passed.

Q. And those points needing clarification were points relating to agreements which you had?

A. Yes.

25 Mr. PICKERING, I object to that as calling for the contents of documents which are not present here.

Mr. POLLACK. The objection is noted.

Q. In passing upon the questions concerning the resolutions, was there any question raised or discussion had concerning ratification of agreements by Mr. Collins?

Mr. PICKERING. The same objection.

Mr. BLAIR. We furnished—

(Discussion off the record.)

Mr. POLLACK. Will you read the question?

(The reporter read the last question.)

A. No.

Q. Was one of the reasons for the introduction of this resolution pertaining to your agreements the fact that Mr. Collins had previously ratified the agreement and it was considered by the people who introduced the resolution to be somewhat improper for him to act for the corporation because of his connection with you?

Mr. PICKERING. I object to that question.

26 Mr. BLAIR. I object, and I would also like to have the record note that I have requested counsel for the Government to permit the witness to look at a paper that he produced and handed to the Government this morning; but so far the paper has not been shown to the witness.

Mr. PICKERING. And I also object to that question upon the ground that it is incompetent, calling for the mental operation of others than the witness, calling for an opinion and a conclusion.

27 Mr. MARKER. I now offer as Government's Exhibit No. 2 for identification, the directors' report and statement of account of Scophony, Ltd., for March 31, 1945, which was submitted to the Government pursuant to a subpoena duces tecum.

(The directors' report referred to, marked "Government's Exhibit No. 2" for identification.)

Mr. BLAIR. That was the report of March 31, 1945?

Mr. MARKER. Yes.

(Discussion off the record.)

Mr. MARKER. Will you put that in the minutes also, which also constitutes notice for a meeting of Scophony, Ltd., to take place on March 15th, 1946.

Mr. POLLACK. Does anybody want to hear the substance of the resolution, or can we give it to the reporter and copy it into the record?

Mr. MARKER. To save time, just have the reporter copy it as if I had read it into the record.

Mr. PICKERING. In the first place, in the event that this document is offered in evidence, I want to object to it as incompetent and as not properly authenticated, and I object to it as 28 irrelevant and immaterial; and for the same reason I object to any portion of it being read into the record at this time.

Mr. MARKER. The objection will be so noted, and it may be considered that I have read the following:

"SPECIAL BUSINESS

"To consider and if thought fit pass the following as Ordinary Resolutions:

(1) That the Resolution passed at the 55th Meeting of Directors held on the 25th day of February 1943, as follows, namely:

“6. It was resolved: that the 100 “A” Ordinary Shares of 5/00 each in the capital of the Company be allotted to William George Elcock as fully paid Shares at par and it was further resolved that Certificates of Title in favour of Mr. Elcock be sealed by the Company in due form and issued to him. This was done, be ratified and confirmed.

(2) That an Agreement between the Company and William George Elcock dated the 19th day of December 1942, whereby Mr. Elcock was granted an option during the term of ten years from the 27th day of October 1941 of taking up (as and when issued) at par up to ten percent of the Ordinary Shares in the then unissued or in any increased capital of the Company (subject to the provisions and stipulations contained in the Agreement) be ratified and confirmed.

The said Agreement is open to the inspection of any Member of the Company between the hours of 9:30 a. m. and 5:30 p. m. at the offices of the Company's Solicitors, Fletcher & Co., Newnham House, 13 Bloomsbury Square, London, W. C. 1, between the 8th day of March 1946 and the 14th day of March 1946 and will be produced at the Meeting.

(3) That 179,910 of the unissued shares of 5/00 each in the capital of the Company be offered in the first instance to the existing shareholders of the Company for cash at par payable in full on application such offer to be in proportion to the number of shares held by them respectively; and so that any shares not applied for and any shares which would have to be split into fractions were allotment to take place strictly in proportion to the shares held by the existing shareholders be allotted by the Directors at their discretion and that 19,900 of the unissued shares of 5/00 each in the capital of the Company be offered to Mr. Elcock for cash at par payable in full on application pursuant to the said Agreement dated the 19th day of December, 1942.

Dated this 7th day of March 1946.”

By Mr. MARKER:

Q. Mr. Elcock, at the meeting of March 15th, 1946, did the Chairman of the Board, Sir Benham Carter, render a speech or a report to the shareholders?

Mr. PICKERING. I object to that as not the best evidence.

A. That speech was circulated with the reports and accounts and was taken as read at the shareholders' meeting.

Q. Do you have a copy of that speech?

A. No.

Q. You have no copy of that speech here in the United States?

A. No.

31 Q. Did you read that speech at any time?

A. Yes.

Q. Does this document appear to be a copy of the Chairman's speech which was, as you have stated, circulated with the copy of the directors' report, and other material referred to in Government's Exhibit No. 2 for identification?

A. I could not say that.

Mr. PICKERING. I object to the form of the question.

A. I could not answer.

Mr. PICKERING. And I further object to it as incompetent to establish the authenticity of the document.

Mr. BLAIR. Let him look at it.

Mr. MARKER. I am asking him at this time to identify it.

Mr. BLAIR. I think he ought to see it.

A. It is a photostat copy. I can't say. I would not remember word for word, whether it is in the form that the speech was set up.

32 Q. Does that appear to be a copy, according to your recollection?

Mr. PICKERING. I renew my objection.

A. I do not think you can ask me that. That has been a photostat from the original. Can I see the original?

Mr. MARKER. I do not have the original.

Q. Mr. Elcock, there was a meeting of March 15, 1946, in England?

A. Yes.

Q. You have stated in connection with that meeting that there was circulated a copy of the Chairman's speech?

A. Yes.

Q. I have offered you to examine and state whether or not a document purports to be a true copy of that speech. Now, that speech, the printed speech, must have had some characteristics of a physical nature within a fairly short period of time for you to have some idea whether or not that purports to be an accurate copy?

Mr. PICKERING. I object to that question as incompetent. Whether or not this witness has some idea would not establish the authenticity of this photostat.

A. I can't accept the word accurate.

33 Q. You have stated that you cannot state it is accurate?

A. Accurate.

Q. Can you point to any inaccuracy?

Mr. PICKERING. I object to that as incompetent.

A. I cannot accept this.

Q. Will you answer yes or no? Can you point to any inaccuracy?

A. No.

Mr. BLAIR. May I make a suggestion here? Why don't you get a copy for the witness for him to see?

The WITNESS. At this stage I could not quote whether every expression is right.

(Discussion off the record.)

Mr. BLAIR. What date does that report have? Let us put that on the record.

Mr. MARKER. This purports to have no precise date; but it refers to the directors' report and account for the year ending the 31st of March 1945, and in the introduction it stated that the following is a copy of the report which the Chairman will make to the

Ninth Ordinary General Meeting to take place on Friday, 34 the 15th day of March 1946. That is the introduction to this document.

Mr. BLAIR. Perhaps if you would indicate the source from which you got the original, and of which you took a photostat, he might be able to get ahold of that source and get the original.

Mr. MARKER. I now offer for identification purposes as Government's Exhibit No. 3, this document entitled "Scophony, Limited; Chairman's speech for the Ninth Ordinary General Meeting."

Mr. BLAIR. If you are going to, later on, attempt to examine this witness about that, as to its authenticity, I think we are wasting time.

Mr. MARKER. Make your objection, Mr. Blair, and it will be noted.

Mr. BLAIR. I am objecting on behalf of the witness to be called upon to testify in connection with a photostat. There is no date. I do not think there would be any question whatsoever, if he saw the original. Where did the photostat come from?

Mr. PICKENS. I object to the document as incompetent, irrelevant, and immaterial; not the best evidence; not properly authenticated; and in fact it does not appear to be a fair 35 and accurate copy. It is a mutilated copy, with marks on there that have been made by someone; I don't know whom.

(Document referred to marked "Government's Exhibit No. 3" for identification.)

Mr. CHERRY. May I ask several questions as a preliminary to this exhibit?

Mr. MARKER. I do not think it would be proper at this time.

Mr. CHERRY. It is in the nature of the voir dire, on the voir dire, to try the qualification of the witness in connection with this specific paper. If you have any objection I will desist and hold off until you are through.

Mr. MARKER. I have no objection, Mr. Cherry.

By Mr. CHERRY:

Q. Mr. Elcock, were you acquainted with the purposes of the meeting of March 15th?

A. Yes.

Q. And so far as your recollection serves, are those purposes stated in the exhibit which has been shown to you?

Mr. MARKER. Referring to Government's Exhibit No. 2.

36 Mr. PICKERING. I object to that question as incompetent, irrelevant, and immaterial, not adequate properly to authenticate the document.

Q. Will you answer the question?

Mr. FALLON. I object further as calling for the contents of the document itself.

Q. Will you answer the question?

A. That document that was produced was passed by the shareholders at the meeting of the 15th of March.

Mr. MARKER. Is that responsive to your question, Mr. Cherry?

Q. And it does, in fact, state accurately the proceedings of that meeting, does it not?

A. Yes.

Mr. PICKERING. Your question related to Government's Exhibit for identification No. 2?

Mr. CHERRY. Yes. That is the one setting forth the resolutions proposed to be passed.

By Mr. MARKER:

Q. At this time, Mr. Elcock, I would like you to read from Government's Exhibit for Identification No. 3 the following portions, starting at the first Board Meeting to Management
37 Committee, and I would like you to read it into the record.

Mr. PICKERING. I object to it being read into the record. The document is incompetent, hearsay, not properly authenticated.

Mr. MARKER. The objection will be noted.

Mr. PICKERING. The document will either go into evidence or be rejected. What is the purpose of reading part of it into the record. You've made your record already.

Mr. MARKER. I want certain portions of it read, because the particular portion which is now going to be read deals with the particular question we have been presumably attempting to answer, namely, Mr. Collins' relationship with Mr. Elcock.

The WITNESS (reading): "At the first Board Meeting thereafter, namely, on 25th February 1943, the resolution allotting the 'A' Shares to Mr. Elcock was passed. Owing to the resignation of the three Directors (shortly after the Annual General Meeting) and the absence of Mr. Levey in America, only four Directors

were present, Messrs. Elcock, Collins, Walton, and myself, of whom Mr. Elcock was treated as an interested party. We have now been advised that Mr. Collins, though having no interest in the allotment, must also be considered as interested, having been appointed by Mr. Elcock under his powers as Financial Controller a member of the Management Committee."

Q. Therefore, Mr. Elcock, Mr. Collins acted for you as Financial Controller on the Management Committee?

A. No.

Mr. PICKERING. I object to the form of the question as argumentative.

Q. He did not act for you?

A. No.

Q. Did he act in your behalf?

A. No.

Q. Did he act as your representative?

A. Yes.

Q. Was there any occasion during which Mr. Collins as a member of the Management Committee and as your representative did not act for you and on your behalf?

A. I can't answer a wide question like that without documents before me.

Q. Do you think he so acted?

Mr. BLAIR. I object to the form of the question.

39 Mr. PICKERING. I object.

Q. You know that he acted as your representative?

Mr. FALLON. I object to what he knew.

Mr. MARKER. The objections will be noted.

A. He was appointed by me under my Financial Controller agreement; but until 1946 he was also an independent director; was held to be an independent director of the company.

Q. Held so by whom?

A. By the company and by the rest of the directors.

Q. Mr. Elcock, the portion from Government's Exhibit No. 3 states, does it not, that Mr. Collins did not act or could not act as an independent party for Scophony, Ltd., as regards his acts in connection with Mr. Elcock?

A. He did.

Mr. PICKERING. I object to that upon the same ground as urged against Government's Exhibit No. 3 for identification itself.

A. He did act until it was found at the beginning of 1946 that his position was as cleared up in that resolution.

By Mr. POLLACK:

40 Q. Do you mean, Mr. Elcock, that he was an independent director until someone found out that he was connected with you?

A. It was merely a personal interpretation. We went to several counsel on it, but he acted independently.

By Mr. MARKER:

Q. Will you state the basis upon which it was decided that he did not act independently?

Mr. PICKERING. I object to that as calling for the mental operation of persons other than the witness, and calling for a conclusion and for an opinion, and as incompetent.

A. The company was advised by counsel of the position.

Q. The company was advised?

A. Yes.

Q. You were also so advised?

A. Not independently.

Mr. FALLON. I object to the last two answers as incompetent, and more to strike them out.

Q. Mr. Elcock, Government's Exhibit No. 2 for identification refers to a resolution which allotted to you "100 'A' Ordinary Shares" of Scophony, Limited; were such 100 "A" Ordinary Shares in fact allotted to you?

41 Mr. PICKERING. I object to the question on the same ground that I urged against Government's Exhibit No. 2 for identification.

Mr. MARKER. The objection will be noted.

A. Yes.

Q. Did you pay for these shares, or were they given to you?

A. I paid for them.

Q. You paid the par value of those shares?

A. Yes.

Q. Which was what?

A. 25 pounds.

Q. That is for the 100 "A" ordinary shares?

A. Yes.

Mr. FALLON. Is that 25 pounds a share, or 25 pounds for the total?

Mr. MARKER. For the total 100 "A" shares.

The WITNESS. 25 pounds.

Q. Mr. Elcock, did these 100 "A" ordinary shares have any peculiar or special characteristics as compared with other shares of Scophony, Limited?

A. Yes.

42 Mr. PICKERING. I object to that as incompetent; not the best evidence. The characteristics of the shares are undoubtedly fixed by the charter, or what other document in English Law corresponds to the American.

Mr. BLAIR. I object to the form of the question.

Mr. MARKER. The witness has already answered the question; yes.

Mr. BLAIR. I am sorry. I did not hear. I move to strike out the answer. He answered before I had time to object.

Q. Will you explain what peculiar or distinguishing characteristics the 100 "A" shares had compared with the other shares of the company?

Mr. BLAIR. I object to the form of the question.

Mr. PICKERING. Same objection.

Mr. MARKER. The objection will be noted.

Q. Do you understand the question, Mr. Elcock?

Mr. BLAIR. I object to your calling it peculiar and injecting adjectives here. Why don't you ask him what they were, if he knows?

Mr. MARKER. I will rephrase the question.

Q. Did these 100 "A" ordinary shares so described have any special characteristics?

43 Mr. PICKERING. Same objection; also to the form of the question.

A. Special; yes.

Q. Will you explain these special characteristics, please?

Mr. PICKERING. Same objection.

A. As far as I can recollect, each share had the rights of 840 of the ordinary shares; each special "A" share had the rights equal to 840 ordinary shares.

Q. Is that the only special characteristic that you recall?

A. Yes.

Q. You do not know that there were any others?

A. I said "rights," which embodies—it was rights; yes, rights to 840 ordinary shares.

Q. Those are the only rights?

A. As far as I recollect.

Q. Is it not a fact, Mr. Elcock, that those 100 ordinary shares also had the right to elect two directors of Scophony, Limited?

Mr. PICKERING. I object to it as not the best evidence and as incompetent.

A. Not that I recollect.

44 Q. You have no such knowledge?

A. No such knowledge.

Q. If those shares had such characteristics or special effect, they would be quite important?

Mr. PICKERING. I object to the form of the question.

Mr. BLAIR. I object to the form of the question.

Mr. PICKERING. And on the further ground that it is argumentative, and that the question is incompetent.

Mr. MARKER. We will note the objection.

Mr. BLAIR. I object to the form of it. Don't you want to rephrase the question?

Mr. MARKER. I will rephrase the question.

Q. If the 100 "A" shares had the right to elect two directors, you would know it?

A. I do not recollect the position.

Q. You do not recollect?

A. No.

Q. Do you know whether you could sell these 100 "A" ordinary shares in part?

Mr. PICKERING. I object to that as not being the best evidence.

45 Mr. MARKER. The objection will be noted.

A. I could not answer that.

Q. You don't know?

A. I don't know.

Q. Do you now own these 100 "A" ordinary shares?

A. No.

Q. You have disposed of these shares?

A. Yes.

Q. When did you dispose of these shares?

Mr. BLAIR. I know my position here; but I am just inquiring, what is the purpose of this, Mr. Marker? What is the purpose of all this inquiry about?

Mr. MARKER. Is this off the record?

Mr. BLAIR. Either on or off, it does not make any difference.

(Discussion off the record.)

Mr. BLAIR. Will you please read the question?

(Stenographer reads the question: "When did you dispose of these shares?")

A. In this year; January or February of this year.

Q. In January or February of this year?

A. Yes.

46 Q. You disposed of all these shares?

A. Yes.

Q. Did you sell them in part or as a lump sum, or as a lump matter?

A. The whole block itself.

Q. The whole block?

A. Yes.

Q. Mr. Elcock, did these 100 "A" ordinary shares constitute the equivalent of 10% of the outstanding shares of Scophony, Limited?

A. Yes, sir. Perhaps I had better elaborate that.

Q. Would you, please?

A. It carried rights equivalent to 10% of the capital stock.

Q. Mr. Elcock, was it pursuant to this 10% stockholding right that you had in Scophony, Limited, that Mr. Collins was elected a director to the Board of Scophony, Limited?

A. No.

Q. He was elected by the stockholders at large?

A. Yes, sir. He was elected before I was connected with the company; but I cannot answer that question.

Q. Before you were connected with the company?

47 A. Yes.

Q. According to Government's Exhibit No. 1, you appeared on the Board of Scophony, Limited, in October 1941?

A. Yes, sir.

Mr. PICKERING. I object to any reference to Government's Exhibit No. 1 for identification on the grounds originally urged against the exhibit itself.

Mr. MARKER. The objection is noted.

Q. It was at that meeting that various resolutions in connection with your loan to the company were submitted?

Mr. BLAIR. If I may refresh your recollection, Mr. Marker, I think the witness has already testified that the transactions set forth in there were not transactions that were finally consummated.

Mr. MARKER. That is not my recollection. My understanding is that these items that were consummated, the resolutions that were adopted, were adopted at that meeting, but they were not carried out precisely in those terms; but the resolutions that were so recited were adopted.

Q. Is that correct?

48 A. The principal terms were agreed, but they were not carried out in that form.

Q. But what occurred at that meeting, the resolutions that were passed upon were the resolutions that were recited in Government's Exhibit No. 1 for identification?

Mr. PICKERING. I object to that on the same ground as urged against Government's Exhibit No. 1.

Q. Mr. Elcock, according to Government's Exhibit No. 1 for identification, you attended the meeting of Scophony, Limited on October 1941?

Mr. PICKERING. Same objection.

Q. As an alternate director for Mr. Deutsch?

Mr. PICKERING. Same objection as I originally urged to the exhibit when offered.

A. Yes.

Q. Did you become a director at the subsequent meeting of Scophony, Limited?

A. No.

Q. When did you become a director of Scophony, Limited?

A. Some many months later; but I can't recollect the date.

Q. Many months later?

A. Yes.

49 Q. Is it customary in Scophony, Limited, to elect directors every few months or every year?

A. I was elected when there was a vacancy.

Q. A few months?

A. Yes; I have not any recollection of time.

Mr. BLAIR. The witness said a number of months.

Q. A number of months. Would you say it was less than a year?

A. I can't answer that.

Q. You said a number of months.

A. Well, I don't know; I said maybe a number of months.

Q. It does not appear, according to Exhibit 1, at which you appeared as an alternate director, that Mr. Collins was at that time a director?

Mr. PICKERING. The same objection.

Q. Do you know when Mr. Collins was elected?

A. No.

Q. Mr. Elcock, you have testified that Mr. Collins was a member of the Management Committee as your representative?

A. I did preface the remark, if there were a Management Committee they were an operative management committee, but not appointed by the company.

50 Q. There was in fact a Management Committee?

A. Yes.

Q. And to that Management Committee you appointed as your representative—

A. No; I did not appoint Mr. Collins as my representative.

Q. You did not select him as your representative to the Management Committee?

A. No.

Q. I refer you to Government's Exhibit No. 3, and in particular to the portion that you have read into the record, which states that Mr. Collins was appointed by Mr. Elcock as a member of the Management Committee. Do you now take issue with that?

Mr. PICKERING. The same objection as I made to the exhibit itself, which I believe is Government Exhibit No. 3; and the further objection as to the form of the question, and that it is argumentative.

A. No.

Q. Then was Mr. Collins appointed a member of the Management Committee by you?

A. Yes.

51 Q. Mr. Elcock, you testified that you appointed him as your representative to the Management Committee, did you not?

A. Yes.

Q. Will you state the powers and functions of the Management Committee which was in fact in operation for Scophony, Limited?

Mr. PICKERING. I object to that as not the best evidence.

A. I have not any record of them.

Q. What is your knowledge of such activities, Mr. Elcock? I did not ask you for the record. I asked you for your knowledge.

Mr. PICKERING. I object to that as incompetent.

Mr. MARKER. The objection will be noted.

A. I have no note of their powers.

Q. As Financial Comptroller of Scophony, Limited, who, in fact, appointed a representative to the Management Committee, you state you have no knowledge of the powers or functions of that committee?

A. I have no note of the powers of that Management Committee.

Q. Do you have any knowledge of the functions and powers of that committee?

52 Mr. PICKERING. That is incompetent; and not the best evidence.

A. The Management Committee has general powers of management.

Q. Management of what; what company?

A. Of this company.

Q. What are the activities of the company over which it would exercise powers?

A. Production and general administration.

Q. Was the Management Committee an active, functioning committee?

A. Yes.

Q. Was Mr. Collins in daily attendance at Scophony, Limited?

A. No.

Q. In weekly attendance?

A. I can't recall.

Q. Can you state approximately his attendance?

A. I should think alternate weeks.

Q. Alternate weeks. Did Mr. Collins report to you the activities of the committee?

A. I answered that question already.

Q. Will you answer it again, please?

53

A. No.

Mr. BLAIR. May we have that question read?

(Reporter reads the question, "Did Mr. Collins report to you the activities of the committee?")

Q. Did you have knowledge of the activities of the Management Committee?

A. No.

Q. No?

A. No.

Q. You are now stating that you had no knowledge of the activities of the Management Committee?

A. I had no full knowledge of the activities of the Management Committee.

Q. What knowledge did you have?

A. Knowledge of essential matters.

Q. Would you give an example or explain matters of an essential nature that you did have knowledge about?

A. No.

Q. You can't give an example?

A. The answer is, no. You said, will I give one; and I said no.

Q. I am asking you to give one.

A. That is different.

54 Q. I ask you, Mr. Elcock, to please give an example of such essential matters.

A. If the company were proposing to expend some thousands of pounds on machinery, it would be mentioned to me.

Q. Did such occasions in fact occur?

A. Yes.

Q. How frequently?

A. I have no knowledge now. I have not any records here.

Q. How frequently were you in contact with the Management Committee?

Mr. BLAIR. Are you speaking about any particular period?

Mr. MARKER. I am giving him free play.

A. I would think monthly.

Mr. BLAIR. From what period?

The WITNESS. From the middle of 1942 up to the end of 1945.

Q. In what manner were you informed monthly of the activities of the Management Committee?

A. The Management Committee would call and see me, or I would call and see them.

55 Q. At your office, or at the office of the Management Committee?

A. At my office.

Q. They would come to your office to report monthly on the activities?

A. They would come to see me—not necessarily report. We had many other activities.

Q. Mr. Elcock, Government's Exhibit No. 2 for identification reports that the company gave Mr. Elcock to purchase 10% of the ordinary shares of the company which would be issued at any time for the term of 10 years from October 27, 1941, does it not?

A. Yes.

Mr. PICKERING. I object to that and I move to strike the answer out upon the ground urged against the admission of Government's Exhibit No. 2 itself.

Mr. MARKER. The objection is noted.

Q. Do you still possess this option?

A. No.

Q. You do not?

A. No.

Q. Did you ever exercise that option to purchase 10% of the shares?

A. I was not in a position to.

56 Q. You were not in a position to?

A. No.

Q. Did the occasion arise that there were additional shares issued?

A. Yes.

Q. When?

A. At the date of the annual meeting.

Q. That was March 15th of this year?

A. Yes, sir.

Q. At which time you had already disposed of your 100 "A" shares?

A. Yes, sir.

Q. Which had previously constituted 10% of the shares?

A. Yes.

Mr. BLAIR. I do not think he said it constituted 10% of the shares. I think he said rights.

The WITNESS. Rights.

Q. Will you explain how you lost this option to purchase this 10%?

A. I sold it at the time I sold my shares.

Q. In other words, you had the power to dispose of that option?

57 A. Yes, sir.

Q. Together with the 10% shares that you did hold?

A. Yes, sir.

Mr. BLAIR. May I ask the witness: When you ask him about 10%, I have to make it clear; 100 shares did not constitute 10%?

The WITNESS. They carried the rights of 10%. They had equivalent values.

Q. Mr. Elcock, as part of your agreement with Scophony, Limited, did you also have any rights relating to Scophony, Limited's, United States patents?

Mr. PICKERING. I object to that as incompetent and not the best evidence.

A. To which agreement do you refer?

Q. In connection with any agreement which you may have had with Scophony, Limited, did that agreement provide for your having any rights relating to Scophony, Limited's, United States patents?

A. No.

Mr. BLAIR. May I have that read again?

(Reporter reads the last question and answer.)

Q. Mr. Elcock, have you testified that you loaned to Scophony, Limited, the sum of 20,000 pounds?

A. Yes, sir.

58 Q. Was that sum furnished by you personally?

A. Yes.

Q. There was no other party who provided that finance for you?

A. No.

Q. Did you receive from Scophony, Ltd., a commission in connection with that loan?

A. No.

Q. You did not?

A. No.

Q. Mr. Elcock, I read from Government Exhibit No. 1 which purports to be a copy of the minutes of the meeting of the Board of Scophony, Ltd., that took place in October 21st, 1941 which reads in part: "Resolved that a commission of," I think it is 5 pounds or five percent, five pounds percent, "on all money provided by Mr. Elcock by way of loan or purchase of plant, et cetera, be paid by the company."

Mr. PICKERING. I object to that on the same ground as urged against Government Exhibit No. 1 itself.

Mr. MARKER. The objection is noted.

Q. Was that commission, in fact, paid?

A. No.

59 Q. It was not?

A. No.

Q. Why wasn't it paid? Did you relinquish it?

A. I told you those were purely negotiations and they were not carried out in toto.

Q. They were not carried out in full; and did you receive any equivalent payment or obligation or consideration for surrender of that loan?

A. Commission?

Mr. PICKERING. I object to the form of the question. The witness has not testified that he surrendered any loan.

Mr. POLLACK. He made a mistake. He said commission and he corrected himself and said commission instead of loan.

Mr. PICKERING. I am talking about surrender. There is no evidence that he surrendered anything.

Q. Mr. Elcock, these minutes resolved that they accept Mr. Elcock's offer, and the following resolutions were passed to accept that offer. Was it one condition of your offer that you receive such a commission?

60 Mr. PICKERING. I object to that question upon the same ground as originally registered against the exhibit itself.

A. I have said that I received no commission.

Q. Was it part of your offer that you receive such commission?

A. I can't recall now.

Q. Can you recall it by examining the Government's exhibit?

A. Yes. It was a condition of the terms set out there, a condition of proposals which were set out which were not carried through.

Q. Mr. Elcock, you testified that you arrived in the United States on or about March 24th?

A. Yes.

Q. What was the purpose for your visit to this country, Mr. Elcock?

Mr. BLAIR. Do you think that is relevant to this whole thing?

Mr. MARKER. It might be and it might not.

Mr. BLAIR. I know that the counsel for a witness is not in a position to object to relevancy.

61 Mr. MARKER. Do you have any objection to the question?

Mr. BLAIR. I am just making a statement to you, Mr. Marker.

Mr. MARKER. I would like Mr. Elcock to state the purpose of his visit to the United States.

A. I came to investigate the position of Scophony Corporation of America.

Q. What were the circumstances which led to your investigation?

A. The company had ceased to have a Board of Directors able to act and it had an action with the Federal Department of Justice.

Q. Since you were no longer a stockholder at this time, Mr. Elcock, what was your interest in these matters?

A. As a director of the company.

Q. You were delegated by the company to come here and to examine into these matters?

A. I offered to come out here and the Board accepted my offer.

Q. So you are in this country as a representative of Scophony, Ltd.?

A. As a director of Scophony, Ltd.

62 Q. As a director?

A. Yes, sir.

Q. But you have no personal financial or stockholding interest either in Scophony, Ltd., or Scophony Corporation of America?

A. I have no financial or stockholding interest in Scophony Corporation of America. I have a financial interest in Scophony, Ltd.

Q. What is your present financial interest in Scophony, Ltd.?

A. Under my Financial Controller agreement.

Q. So you came to this country both as Financial Controller, and as a director of Scophony, Ltd.?

A. I came solely as Director.

Q. Is there anybody acting as Financial Controller in your absence?

A. No.

Q. You still are Financial Controller of Scophony, Ltd.?

A. Yes.

63 Q. As Financial Controller of Scophony, Ltd., you are interested in Scophony, Ltd.'s financial interest in Scophony Corporation of America?

A. As a Director I am interested.

Q. Are you in this country to investigate, as you stated, the affairs of Scophony Corporation of America, as an official representative of Scophony, Ltd.?

Mr. BLAIR. I object to the form of the question.

Mr. MARKER. The objection will be noted. You may answer the question.

Mr. BLAIR. May I have the question read, please?

(The reporter reads the last question.)

A. As a director.

Q. Before you left London, England, was there any action by the Board of Scophony, Ltd., in connection with your trip to the United States?

A. They executed a power of attorney.

Q. To you?

A. Yes, sir.

Q. For what purpose?

Mr. BLAIR. I object to that.

64 Mr. PICKERING. I object to it as not the best evidence.

Mr. BLAIR. I would like to have noted that this morning there was furnished to the Government a copy, the original, in fact, of that power, and, therefore, I think the power speaks for itself.

Mr. MARKER. At this time I offer it for identification as Government's Exhibit No. 4.

Mr. BLAIR. If it is agreeable with you, may I substitute a photostat for that for having it marked for identification?

Mr. PICKERING. Mr. Blair, may I inquire, is this the original power of attorney?

The WITNESS. Yes.

Mr. MARKER. We shall consider the original power of attorney deemed marked as "Government Exhibit No. 4" for identification and when you have submitted the photostat, that may be marked as "Government Exhibit No. 4" for identification with the same force and effect as if the original had been marked.

Mr. FALLON. I merely want the record—Has the witness been sworn?

65 Mr. MARKER. I don't know. I wasn't here. Let us swear him now.

(The Commissioner thereupon administered the oath to the witness as follows:

Oath to witness

Do you solemnly swear that, in this matter pending in the United States District Court between the United States of America and Scophony, Limited, etc., that you will tell the truth, the whole truth, and nothing but the truth and do you solemnly swear that whatever you have testified to so far has been the truth, the whole truth, and nothing but the truth. So help you God.

(The witness answered: yes, sir.)

Mr. MARKER. Is there any objection by anyone here as to the witness having been sworn at this time?

Mr. FALLON. There is no objection. I merely want the record to show that the witness was sworn at this point.

Mr. POLLACK. Mr. Elcock, is all the previous testimony that you have given here today consistent with the oath that you have just taken?

The WITNESS. Yes. If I had given an oath previously, I would have said the same answers.

66 By Mr. MARKER:

Q. Mr. Elcock, will you describe the circumstances concerning the preparation and execution of this power of attorney to you?

A. The company had received reports that there were no directors of Scophony Corporation of America able to act; that there was litigation; and in these circumstances they accepted my offer to come to America and gave me power of attorney in case it was needed to adjust any impasse.

Q. Then one of the purposes for which you came here was to adjust impasses, to use your phrase?

A. The only purpose.

Q. What were the nature of these impasses?

A. The company could not act as it had not a Board of Directors and it was faced with litigation.

Q. Since you have been in the United States, have you taken steps relating to these impasses?

A. I have interviewed all parties and I have discussed a settlement with them.

Q. Settlement about what?

A. You don't like my word "impasse"?

Q. I am using your wording, so we do not get into—

67 A. Then I will use the word of "impasse." It is a nice English word and it covers a multitude of sins.

Mr. POLLACK. Will you describe the multitude of sins?

The WITNESS. That was off the record.

Q. You say you have interviewed various parties in connection with this impasse?

Mr. FALLON. I object to any testimony of conversations subsequent to the filing of the suit.

Mr. MARKER. The objection is noted.

Mr. PICKERING. I join in that objection.

Q. Will you state more precisely the parties with whom you had the discussions?

A. May I answer? There may be objections.

Mr. BLAIR. You can except. Excuse me.

Q. Will you answer the question, please?

A. Yes. I have seen the executives of General Precision Equipment.

Q. Who are they?

A. Mr. Hines and Mr. Rinear. I have seen Mr. Levey. I have seen Mr. Cherry and I have seen Mr. Raibourn.

Q. Will you describe the nature of the discussions that you had with each of these individuals?

68 Mr. FALLON. Same objection, as subsequent to the commencement of the suit.

Mr. PICKERING. Same objection.

Mr. MARKER. The objections are noted.

Mr. FALLON. Also on the ground of incompetency.

Q. Will you answer the question, please. Mr. Elcock, do you wish it repeated?

A. No. I have got to take it individually.

Q. I beg your pardon?

A. I have got to take it individually, to clarify my own mind. I have discussed with Mr. Hines and Mr. Rinear the question of the company being provided with further funds for development.

Q. Which company?

A. Scophony Corporation of America, for the development of Scophony system of Television, of bringing the apparatus which they have up to date, and with a view to getting the company operating again on sound lines.

Q. What company?

A. Scophony Corporation of America.

Q. Mr. Elcock, are you familiar with the agreement
69 entered into between the various defendants in this suit?

A. No. I have a copy with me, but I am not familiar with them.

Q. When you say you are not familiar, you mean word for word, is that correct, or do you mean that you have no knowledge of any of the substance and general tenor of those agreements?

A. I know the general tenor. Details I don't know.

Mr. PICKERING. Are you referring now to the agreements attached to the complaint?

Mr. MARKER. I am.

Mr. PICKERING. Not to the other agreements?

Mr. MARKER. Not in this question.

Q. Will you also tell us about your discussions with the other parties that you have made?

A. I had a talk with Mr. Raibourn with a view to finding out what his company wished to do and whether I could acquire, whether there were any terms upon which I could acquire his stock and whether he would put up further money into Scophony Corporation of America.

Q. For what purpose?

A. For the company to operate.

70 Q. So that the company could operate in what manner?

A. In accordance with the functions as set out in agreements.

Q. What functions did they have according to those agreements to which you refer?

Mr. PICKERING. I object to that as not the best evidence. The agreements speak for themselves; also as calling for a conclusion, for an interpretation and construction of a document.

Q. Will you explain?

A. The agreements provide for the incorporation of a company to carry on in the development and exploitation of the Scophony system of television.

Q. You also had some conversation with some other gentlemen?

A. With Mr. Levey. I talked with him. I tried to see whether he would sell his stock. I tried to find out, discuss with him, the position of the company. And then I proposed that he buy the stock owned by the Scophony, Ltd.

71 Mr. BLAIR. Will you repeat that answer, please.

(The reporter read the last answer.)

Q. What were the answers given by these parties to these various proposals?

Mr. FALLON. I object, on the same grounds as stated before.

Mr. PICKERING. I object.

Mr. MARKER. The objections are noted.

A. There were discussions and they would not commit themselves in any way.

Q. You have indicated separate discussions with separate parties. Were there any joint discussions with several parties?

A. No.

Q. Each discussion took place with individuals?

A. Yes.

Q. Did the discussions, therefore, as described by you look towards changes in the agreements which are set forth as Exhibits to this complaint?

Mr. FALLON. I object to what discussions looked forward to. It is an improper question.

Mr. PICKERING. Same objection.

72 Mr. BLAIR. I object to the form of the question.

Mr. MARKER. The objections are noted.

The WITNESS. Could I have it repeated?

Mr. MARKER. Will you repeat the question, please, Mr. Reporter.

(The question was repeated as follows: "Did the discussions, therefore, as described by you look towards changes in the agreements which are set forth as exhibits to this complaint?")

A. Only on the question of ownership of stocks.

Q. Did you not testify that you also proposed the question of the advancing of additional moneys, at least with regard to your answer to Mr. Raibourn?

A. Yes.

Mr. BLAIR. I think that is an improper characterization of the testimony. I do not think there is any testimony as to any answer to Mr. Raibourn in the record.

Mr. POLLACK. It was Mr. Hines and Rinear. The objection will be noted. I think with respect to Mr. Raibourn, he did say

that he asked him whether or not he would pay any further money in—

Mr. PICKERING. Both?

73 Mr. MARKER. To clarify this—

Mr. FALLON. There is no answer to the question.

Mr. MARKER. He did answer: yes.

Mr. FALLON. I move to strike out the answer.

Mr. MARKER. The objection will be noted.

Q. In your conference with Mr. Hines or with Mr. Rinear, did you propose or discuss that they should put additional funds into the hands of Scophony Corporation of America so that Scophony Corporation of America could operate, to use your term?

A. Yes.

Mr. FALLON. Excuse me. So the record is clear, without constantly interrupting you, it will be noted that the objection runs to all conversations subsequent to the filing of the suit.

Mr. MARKER. Yes.

Mr. PICKERING. May I have the same reservation?

Mr. MARKER. Yes.

74 Q. In your conferences or discussions with Mr. Raibourn or any other representative of Paramount Pictures, Inc., Television, Inc.—

Mr. FALLON. I object to the form of the question.

Q. Did you discuss or propose or discuss with them that they make financial advances to Scophony Corporation of America so that Scophony Corporation of America could continue to operate?

Mr. FALLON. I object to the form of the question. There is no testimony that this witness discussed anything with anyone other than with Mr. Raibourn.

A. If you restrict it to Mr. Raibourn, the answer is yes.

Q. Did you have any discussions with any representative of Television Productions, Inc., or with Paramount Pictures, Inc., other than Mr. Raibourn?

A. No.

Q. In your discussions—

A. Could I make one addition to my previous reply in connection with the discussions with Mr. Hines and Mr. Rinear. I did discuss the alteration or modification of the licenses so that they would be nonterritorial and nonexclusive. That was a proposal on my part.

75 Q. That is in addition to the question of finances?

A. That was a proposal on my part.

Q. Did you similarly discuss with Mr. Raibourn the same subject matter, that is, additional finances to Scophony Corporation of America and modification of territorial and licensing agreements?

A. Money; yes. The last thing I don't recall. I may have done.

Q. Did you discuss with Mr. Levey the question of his advancing additional finances to Scophony Corporation of America and also discuss with him the question of modification of the territorial restrictions in the agreements?

A. In the case of Mr. Levey he was already advancing money to the company and I do not recall the question of discussing licensing with him.

Q. Then according to your present testimony, Mr. Elcock, since you have been here in the United States you have had conferences and discussions or negotiations tending towards or looking towards modifications in the agreements which are annexed as exhibits to the complaint in this action?

76 A. Of the question of licensing as nonterritorial and nonexclusive; yes.

Q. And also on the question of additional finance?

A. Yes.

Q. Therefore, since you did have discussions looking towards modification in the territorial restrictions and looking towards changes in regard to the exclusive license and with regard to the provision for additional finance to Scophony Corporation of America, you had conferences and discussions and therefore negotiations looking towards modifications in the agreements between the defendants in this action?

Mr. PICKERING. I object to the form of the question. It is argumentative. It is duplicitous. It involves confusion.

A. It is very wide. If I can be as wide in my reply.

Q. All I am doing, Mr. Elcock, is summarizing your testimony.

Mr. PICKERING. You are assuming they could not make further advances of money without modifying the agreement, which is not so. Further advancement of money does not necessarily mean part modification of the agreement. The question
77 is meaningless.

Mr. FALLON. I would like to have the record show that I think this whole line of questions is highly improper. The testimony is that the parties met on several occasions on a question of good faith to settle their differences among themselves and the Government and I do not believe it is proper to go into it in connection with the suit.

Mr. POLLACK. He did not ask him with respect to the conversations with respect to the Government angle.

The WITNESS. That is part of it.

Mr. POLLACK. He thus far has avoided any questions on conversations with regard to the Government suit. We are talking about a question of finance and a question of modification of your license. We did not ask about the Government suit.

Mr. PICKERING. Licenses have not anything to do with the Government suit.

Mr. POLLACK. It could or it could not.

Mr. MARKER. The objections will be noted.

78 Q. Mr. Elcock, was your meeting with Mr. Hines here in the United States your first meeting or contact with

Mr. Hines?

A. No.

Q. When had you met him before?

A. I met him once before on a visit of his last autumn to England. I met him once—

Q. Where did that meeting take place?

A. The Savoy Hotel.

Q. In London?

A. Yes.

Q. Who was present at that meeting?

A. Mr. Hines, Bonham Carter, and myself.

Q. What was the nature of that meeting?

Mr. PICKERING. I object to that as incompetent and calling for discussions of third parties.

A. I can only recall generally that it was in connection with the affairs of the Scophony Corporation of America.

Q. Did you discuss the question of the territorial limitations in the agreements between the defendants in this action?

A. No.

79 Q. Did you discuss the exclusive licensing provisions in these agreements?

A. Agreements were not discussed at all. It was a general talk without being anything specific that I am sure about.

Q. There was nothing in this meeting relating to these agreements?

A. The agreements were never discussed.

Q. Were the affairs of this Scophony Corporation of America discussed?

A. On general lines, yes; on the future of television, which is the main thing we are concerned with. I was only present at one meeting. There were several meetings, talks, as far as I know, with Bonham Carter.

Q. Did this meeting at which you attended discuss difficulties or disagreements that were in existence or related to you about disagreements between members of the Board of Scophony Corporation of America?

A. May I use my word "impasse?"

Mr. BLAIR. May I ask you to clarify that question, Mr. Marker?

I think you had two questions in one.

80 Mr. MARKER. Perhaps I had, and I shall use Mr. Elcock's word.

Q. Did you discuss the impassé in the affairs of Scophony Corporation of America?

Mr. FAILON. I object to the form of the question.

Mr. MARKER. The objection is noted.

A. As far as I can recollect; yes.

Q. You did? Did you discuss the nature of that impassé?

A. No.

Q. What was the impassé, as you understood it?

A. That the directors appointed by the "B" shareholders had resigned and there was no competent Board to act and therefore the company just could not proceed.

Q. Did you discuss ways and means of overcoming that impassé?

A. No. I was not present at any discussions.

Q. Did Scophony, Ltd., take any other action during 1945 to bring about a removal of such impassé?

Mr. PICKERING. I object to the form of that question and I object to it as incompetent, not within the province of this witness to tell what the company on the whole did or what some
81 other person may have done. It should be confined to himself.

A. The Board of Scophony tried to get someone over here and when I came over here it was the first chance.

Q. To have somebody here to investigate the difficulties that had arisen?

A. Yes.

Q. You were the first representative of Scophony, Ltd., to so act?

A. Yes.

Mr. BLAIR. I object and I move to strike out the answer, and I think you ought to rephrase the question. You asked him if he was the first one of the directors to come over.

Q. You have testified that you were the first representative of Scophony, Ltd.?

A. I am subject to correction; first director of Scophony, Ltd.

Q. Did Scophony, Ltd., to your knowledge, have any other representative here who attempted to resolve the impassé?

A. I don't know the definition of the word representative.

82 Mr. POLLACK. Have anybody acting for them in any capacity whatsoever?

The WITNESS. Mr. Sloan here.

Q. What was his capacity?

A. As counsel to see, to look into the position and report.

Q. Was anybody else so authorized?

A. I can't answer that. I don't know.

Q. You don't know?

A. On the question of authorization.

Mr. POLLACK. Did anyone, anybody act for Scophony, Ltd.?

The WITNESS. Mr. Fly was counsel who acted for the time and as a member of the Board of Scophony Corporation of America. That is subject to correction. I am not sure whether Fly did go on the Board.

Q. Mr. Fly acted on behalf of Scophony, Ltd., to investigate this impasse?

A. Yes.

Q. He was retained by Scophony, Ltd., to so act?

A. Not exclusively. Part of his fee was paid or contributed by Scophony, Ltd.

83 Q. What was Mr. Fly's activities?

A. I have not any knowledge.

Q. For what purpose was he retained?

Mr. FALLON. I object to that.

Mr. BLAIR. I object to the form of the question.

Q. Will you answer the question?

A. I do not understand.

Q. They are making objections. The objections are duly noted. Now, you state for what purpose Mr. Fly was retained.

A. To investigate the impasse.

Q. Did he confer with the parties to the impasse?

A. I have no knowledge.

Q. Did he report to Scophony, Ltd., as to his activities in that regard?

A. He did send reports.

Q. He did send reports?

A. Yes.

Q. Did you see those reports that he sent?

A. Yes; I would at the time.

Q. You did at the time?

A. Yes.

84 Q. And in those reports, he described his investigation or activities?

Mr. PICKERING. I object to that. It is a confidential communication; incompetent. He was employed as counsel.

Mr. MARKER. Note the objection.

A. I have no recollection of the contents of the reports.

Q. Do you know whether he conferred with Mr. Hines?

A. I say I have no recollection of the contents of the reports.

Q. Do you know whether he conferred with Mr. Raibourn?

A. My reply is the same.

Q. Did any party other than Mr. Fly or Mr. Sloan or yourself investigate the situation with relation to the Scophony Corporation of America in the United States during 1945?

A. Let me say that there was a friend of Bonham Carter who did it as a friend, Commander Mallet who had some talks with some people.

Q. With whom?

A. Particularly Mr. Sloan. I do not know how far his investigations went.

Q. Did he report back to Scophony, Ltd?

A. No; to Bonham Carter.

Q. He reported to Sir Bonham Carter?

A. Yes.

Q. And do you know if he conferred with the various parties?

A. I have no knowledge.

Q. You have no knowledge?

A. No knowledge or recollection.

Q. You have no knowledge whether he conferred with Mr. Fly?

A. I could not answer that.

Q. Is there any other gentleman or representative in 1945 who were asked either by Scophony, Ltd., or Sir Bonham Carter or yourself to investigate the affairs of Scophony Corporation of America?

Mr. BLAIR. I object to the implication in the question, that they would have a representative other than a gentleman.

A. I do not recall.

Q. Do you recall a Mr. Boothby?

A. Yes. I remember he was on a tour.

Q. You remember Mr. Boothby?

A. And he did spend a day.

Q. Did you contact Mr. Boothby?

A. I suggested—I don't know how it was done; it was my suggestion that he was asked to look into it.

Q. Did he report back to you or to Sir Bonham Carter?

A. I don't think he ever did.

Q. He never conveyed to you any reaction or report?

A. That I cannot recall; that part of it. He did not, to me. Whether he did to Bonham Carter, I can't say.

Q. Was he a friend of yours or a friend of Bonham Carter?

A. He was an acquaintance of mine. I met him once before.

Q. Did you ask him to investigate or did Sir Bonham Carter?

A. Sir Bonham Carter. I suggested the name, but I am not sure who got the communication to him.

Q. You believe it was Sir Bonham Carter?

A. As far as I know; yes.

Q. But you think it might have been you?

A. I should think it unlikely that I sent it.

Q. Was Mr. Arthur Levey a director of Scophony, Ltd., during 1945?

A. Yes.

Q. Did he report to Scophony, Ltd., as to the nature of the impasse?

A. He sent his own personal reports to the company.

Q. Did you see copies of Mr. Levey's reports or letters?

A. I never read them.

Q. Never read them?

A. No.

Q. But you know they were received by Scophony, Ltd.?

A. Bonham Carter received numerous letters and documents.

Q. From Mr. Levey?

A. Yes.

Q. But you did not see them?

A. I never read them, I said.

88 Q. Were you interested as to what was occurring with reference to Scophony Corporation of America?

A. Very.

Q. Would you explain why you were not interested to read his communications as to what was occurring?

A. They expressed his own views and were much too lengthy for me to read.

Q. So you decided that his views of the matter were not worth your examination?

A. I did not read the reports.

Q. You did not read the reports?

A. No.

Q. Was Mr. Levey at this time acting as Scophony, Limited's representative in the United States as to the affairs of Scophony Corporation of America?

Mr. FALLON. I object to that as calling for a conclusion and as incompetent.

A. My view is; no.

Q. Your view is no? You were very interested; were not you, as Financial Controller and at that time the holder of shares having the right of 10% of Scophony, Ltd., as to the activities of both Scophony, Ltd.—

A. Yes.

89 Q. And Scophony Corporation of America?

A. Yes.

Q. During 1945, April of 1945, and expiring on September 30th, 1945, was Arthur Levey given an irrevocable power of attorney to act for Scophony, Ltd.?

Mr. FALLON. That is objected to as calling for a conclusion.

A. I can't answer that without the documents.

Q. You say you don't recall?

A. No.

Q. If such power of attorney was given, would it have been an important or unusual event?

Mr. BLAIR. I object to the form of the question.

Mr. MARKER. The objection is noted.

Mr. BLAIR. I think I am going to have to go to the Court if you are going to press the question in that form. I think the Court will make you reframe that question.

Q. You say you have no recollection?

A. Without the document.

Q. Without the documents?

90 A. Yes.

Q. Did you ever refer, Mr. Elcock, to Mr. Levey as representative of the interests of Scophony, Ltd. in the affairs of Scophony Corporation of America?

Mr. PICKERING. I object to that as incompetent.

A. I can't answer that. I don't know.

Q. You don't know?

A. No..

Q. Do you think it is possible that you might have so referred to him?

A. No.

Q. Would you be surprised if I showed you that you do refer to Mr. Levey—

Mr. FALLON. I object to the form of the question.

Mr. BLAIR. So do I.

Mr. MARKER. I now offer for identification as the next exhibit for the Government a cablegram to Robert Boothsby from George Elcock dated March 24th, 1945.

(Cablegram of March 24, 1945, is marked "Government's Exhibit No. 5" for identification.)

91 Mr. FALLON. Let the record show that the exhibit for identification marked "Government's Exhibit 5" was objected to on the ground that it is improperly authenticated. Not only is it a photostatic copy, but it is a photostatic copy of what apparently is not an original. And it is also a mutilated copy, in that it has various markings on it of unknown origin.

Mr. PICKERING. I make the same objection.

Q. Mr. Elcock, having examined Government's Exhibit No. 5, does this refresh your recollection that you asked Mr. Boothsby to investigate the situation with regard to Scophony Corporation of America and to advise you as to the results of his investigation?

A. Yes; I remember now. I had forgotten it.

Q. Did he so advise you as to the results of his investigation?

A. I do not recall any report. He was doing a tour.

Q. But you did—

A. I sent a telegram asking him to look into it.

Q. Did you also on this telegram refer to Mr. Levey as director and representative of the British parent company?

92 Mr. PICKERING. I object to that as not the best evidence. The document speaks for itself and the document has been objected to and may never get into the record.

Mr. BLAIR. I object.

Q. Now, having examined—

A. I do not recall the words. And if I did say he was a representative of the British company, then it is a very loose wording.

Q. But you so described him?

Mr. PICKERING. The same objection.

Q. You so stated that you recall the telegram?

A. That is a correct copy, I accept that the words are in that telegram.

Q. All right. Do you recall that on any other occasion you so described Mr. Levey?

A. No; I do not think so. I do not recall so.

Q. Mr. Elcock, who is Fletcher & Company?

A. They are solicitors or counsel in London who act as professional secretaries to Scophony.

Q. To Scophony, Ltd.?

A. Yes; to Scophony, Ltd.

93 Q. They are the official secretaries and counsel, you say, of Scophony, Ltd.?

A. Yes.

Mr. BLAIR. They are lawyers, are they not?

The WITNESS. Yes, lawyers; yes; practicing solicitors, and professional secretaries.

Q. You have stated that you do not recall if Mr. Levey was given a power of attorney authorizing him to vote the shares of Scophony, Ltd., in 1945?

A. Your previous question was specific. It said from April to October. I said I did not recall.

Q. Do you recall any power of attorney to Mr. Levey?

Mr. BLAIR. Let us clear that question up. Are you referring now to the question you just asked previously or are you referring to the question you asked him sometime ago?

Mr. MARKER. I had finished with Government Exhibit No. 5, if that is what you mean.

Mr. BLAIR. No. You asked him sometime about some power of attorney.

94 Mr. MARKER. That is right. Now I am referring back to that power of attorney which Mr. Elcock said he did not recall.

Mr. BLAIR. I object to the characterization of that, Mr. Marker. If you have got the power of attorney here, why not ask him if he has seen it, if you want to have it identified. But I would not want the record to show this question being asked. I think it is objectionable, even if it does show some particular characteristic of that power to prove it by this witness.

Mr. MARKER. Note that objection.

Q. I ask you, Mr. Elcock, do you recall any issuance of any power of attorney to Mr. Levey during 1945?

A. I do not recall it; no.

Q. You do not recall it?

A. No.

Q. You do not recall any power of attorney at any time?

A. The power of attorney was given to Mr. Fly, and that is the only one I can recall.

Q. And you have identified Fletcher & Company as the official secretaries and counsel to Scophony, Ltd.?

95 Mr. MARKER. At this time I offer for identification purposes as Government exhibit 6, copy of a letter to Mr. Levey from Fletcher & Company dated March 27th, 1945.

(Letter referred to is marked "Government's Exhibit 6" for identification.)

Mr. MARKER. And I want to introduce it into the record as if I had read it into the record, a copy of Government's Exhibit 5.

Mr. BLAIR. Same objection.

Mr. PICKERING. I object to reading that into the record on the same grounds as I made to the document itself when it was marked for identification.

Mr. MARKER. Will you take this into the record?

"FLETCHER & Co.
SOLICITORS

Our Ref: AF/N/567.

NEWNHAM HOUSE,
13 BLOOMSBURY SQUARE,
London, W. C. 1., 27th March 1945.

Scophony Limited

96 DEAR MR. LEVEY: On instructions of the Board of Directors of Scophony, Limited, given with the full approval and authority of Mr. William George Elcock, we enclose herewith a Power of Attorney by the Company in your

favour, which has been duly certified by the United States Consul in London, authorizing you to vote on behalf of the Company in respect of its 625 'A' shares in Scophony Corporation of America at any ordinary or extraordinary General Meeting which may be held in the near future.

"You will observe that the Power has expressly been made irrevocable up to and including the 30th day of September 1945.

"We have today cabled you as follows:

"Scophony limited executed yesterday power of attorney authorizing you vote their 625 A shares Stop Original duly authenticated American Consul despatched airmail today"

"Yours faithfully.

(Signed) FLETCHER & Co.

A. LEVEY, Esq.

Scophony Corporation of America,

527, Fifth Avenue, New York City, N. Y.

Encs.

By Air Mail."

SCA 2744.

97 Mr. PICKERING. I would like to note on the record that I object to Government's Exhibit 6 for identification on the ground that it is incompetent, not properly authenticated, not the best evidence, and on the further ground that it is a privileged communication.

Mr. FALLON. I join in the objection.

Mr. PICKERING. Also I would like to add to that objection that if it is offered or is to be offered for the purpose of proving the execution of the power of attorney, it is incompetent for that purpose, as well as incompetent as a document.

(Examination adjourned at 5:00 o'clock P. M. to Friday, April 26th, 1946, at 10:30 o'clock A. M.)

98

UNITED STATES

v.

SCOPHONY, LTD.

At the office of the Anti-Trust Division of the Department of Justice, 30 Broad Street, New York, N. Y., April 26, 1946, at 10:30 a. m.

Appearances: (Same as before.)

WILLIAM GEORGE ELCOCK, previously sworn, testified further as follows.

Direct examination by Mr. MARKER:

Q. Mr. Elcock, yesterday you used the word "impasse" to describe the difficulties, disagreements, that were going on within the Board of Scophony Corporation of America, and I would like to at this time obtain a more detailed explanation of the situation described as an impasse.

A. I rather expected that. First of all, there was a deadlock between the B directors and A directors, whereby the B directors resigned. Then there was a situation that the Company had not any funds, and the B stockholders would not provide any further money. And still, and the most important of all was the fact of the antitrust suit by the Federal Department of Justice which, to the English Board and to me, seemed to put the company in a state whereby it could not move or take any action at all.

Mr. FALLON. I move to strike out the answer on the ground that the witness is obviously not testifying as to the witness' own knowledge, but as to the mental operations of others, and is making interpretations, characterizations and conclusions.

Mr. MARKER. The objection is noted.

Q. Mr. Elcock, will you explain in what manner you were advised or informed as to the creation and existence of this situation, that, we will continue to use your word, "impasse"?

Mr. PICKERING. It now appears from counsel's question that the testimony is purely hearsay, and I join in the motion to strike it out, and I object to this question on the ground that it is incompetent and hearsay. It does not make any difference what this man was advised or informed by someone else.

A. We have reports from John J. Sloan, who is not here at the moment, who was asked by the Company to investigate when we had a copy of the complaint.

Q. Did you obtain this information from Sir Bonham Carter, Chairman of Scophony, Limited?

A. Sir Bonham Carter always received communications from America personally, and then would either send copies or report them to the Board.

Q. Did you see copies of such reports?

A. Probably; I can't recall, but probably.

Q. You discussed the situation with the members of the Board?

A. Yes.

Q. You stated that one of the problems of this impasse was the question of money; is that correct?

A. Yes.

Q. To carry on the activities of the Scophony Corporation of America?

A. I did not say for what purpose there was no money. I said I understood there was no money.

Q. Was it a fact that Scophony Corporation of America had a continuing expense for which its income was not sufficient?

A. I have not any particulars of the American Company's position.

101 Q. You have stated, have you not, that there was the question of obtaining additional money from the B stockholders in order for the Scophony Corporation of America to operate?

A. If I did say, I would like my actual answer read out.

Mr. POLLACK. I think you said that yesterday.

Q. Would you explain what you have just stated, the need for funds, why that need for funds was present?

A. To keep the Company in existence.

Q. Why did it need funds?

A. It had an office. It had a consultant.

Q. It had employees?

A. Yes.

Q. It had expenses?

A. Yes.

Q. What was the source of income of the Scophony Corporation of America?

A. As far as I recollect, it had money advanced to it by the B shareholders.

Q. Pursuant to the agreement attached as an exhibit to the complaint—

Mr. PICKERING. I object to that as incompetent and calling for a conclusion.

102 Mr. BLAIR. I join in the objection.

Q. In 1945 was any income being obtained by Scophony Corporation of America?

A. I have no knowledge.

Q. You have testified that you knew there was a problem as to funds.

Mr. PICKERING. I object to that.

A. You did not ask me that point, Mr. Marker. You asked me whether the Company had an income. I had nothing to do with the Company. I knew nothing about it at first, until I came to America.

Q. Until you came to America?

A. Yes.

Q. You testified—

A. You asked specific details which I am unable to answer. All I can give you—

Q. To make it very simple, Mr. Elcock, to just get down to it, as you have stated, there was a problem as to funds, was there not?

A. Yes.

Q. And that was one of the problems that you understood to constitute the impasse which you have used?

A. Yes.

103 Q. Early in 1945 do you know whether the B stockholders proposed that the stockholders of Scophony Corporation of America make a loan to the Company?

A. I have no detailed knowledge.

Q. You have no knowledge that there was a question of a loan being made to this Company?

A. No.

Q. You have no knowledge that in fact such a loan was made to the Company?

A. I have no recollection.

Q. Do you know whether Arthur Levey notified Sir Bonham Carter that the B stockholders wanted to make a loan to the Company?

Mr. FALLON. I object to it as incompetent.

A. I have no recollection.

Q. Mr. Elcock, pursuant to subpoena, you have produced some various documents, including a large number of telegrams to and from Sir Bonham Carter and Arthur Levey; is that correct?

A. Yes, sir.

Q. They were in your possession before they were transferred to the Government?

A. Yes.

104 Q. Did you look at these telegrams?

No. They were handed to you intact, as they were sent from Bonham Carter to me here.

Q. You were not sufficiently interested to look at them yourself?

A. No.

Q. So you have no knowledge as to what is in those cablegrams?

A. You have them exactly as they came in the postage from England.

Q. Do you know whether Arthur Levey continually advised Sir Bonham Carter as to the activities of Scophony Corporation of America?

Mr. FALLON. Objected to as incompetent.

Mr. PICKERING. Same objection.

A. My testimony yesterday was that he had communications which I never read, so I can't tell you at what intervals they came, or what they were about.

Q. Do you know that Sir Bonham Carter received them; received communications from Mr. Levey?

A. He did receive communications from time to time.

Q. Do you know whether he requested communications from Mr. Levey?

105 A. I cannot answer for Sir Maurice.

Q. Mr. Elcock, about December 1, 1944, did the Board of Directors of Scophony, Limited, discuss a request from the directors of Scophony Corporation of America, who represented the interests in Scophony, Limited, requesting the Board of Directors of Scophony, Limited, to appoint independent counsel to examine into the conditions of Scophony Corporation of America, and to report to Scophony, Limited?

Mr. BLAIR. I object to the form of the question.

Mr. PICKERING. I object to the question.

Mr. BLAIR. I think it is too involved.

Mr. PICKERING. I object to the form of the question, assuming facts not in evidence, and I also object to it as incompetent.

A. I could not answer. I have no recollection.

Q. You have no recollection of the meeting of the Board?

A. Of the first of December; no.

Q. Do you have any recollection of a Board meeting discussing such a request from the representative of the A stockholders?

Mr. PICKERING. Same objection.

106 Mr. BLAIR. I object.

Q. Will you answer the question now; do you have any recollection?

A. I have no recollection.

Q. You have no recollection of the Board considering that question?

A. No.

Q. Do you recollect that early in 1945 the Board of Scophony, Limited, authorized James Lawrence Fly to represent it in the affairs of the Scophony Corporation of America?

Mr. PICKERING. I object to the form of the question, assuming facts not in evidence; incompetent.

Mr. FALLON. The record shows that I join in these objections.

Mr. BLAIR. May I suggest, just as a matter of procedure, Mr. Marker—of course, you can follow it, as you will; but it seems to me that if we are going to get at the facts here, if you have anything to refresh the recollection of the witness, in the form of a copy of a cable or something else that has been furnished to you, why don't you show it to him?

A. I have no recollection of dates.

107 Q. You recollect that James Lawrence Fly was also retained?

A. It seems to me I can remember Fly; it being decided Fly should investigate.

Q. Do you recollect the circumstances leading to his being so retained?

A. No.

Q. Were you consulted about the retention of Mr. Fly?

A. I can't recall that.

Q. You are Financial Controller of Scophony, Limited?

A. I have not any papers here, Mr. Marker. I am interested in 80 companies, and this is one of the whole lot. I mean, I am not being difficult; but I have not any papers. I would help all I can. You have prepared this case very carefully. You have a lot of information. I have not any papers. I suggest this is unfair to ask me to remember what is comparatively a small interest in my business life.

Q. Mr. Elcock, are you a Financial Controller of some 80 companies?

A. I am a director and owner of some 80 companies.

108 Q. Are you a Financial Controller?

A. No.

Q. And have you some responsibility in connection with them?

A. This is a public company.

Q. All the others are private companies?

A. Yes.

Q. And this is a public company in which you are Financial Controller?

A. And Director.

Q. Would you examine this document, Mr. Elcock, and see if it refreshes your recollection?

Mr. PICKERING. I suggest that the document be first marked for identification, so that the record will show what he is examining.

Mr. POLLACK. If it does not refresh his recollection, we will not use it.

Mr. PICKERING. It keeps it out of the record and it keeps it away from us.

Mr. POLLACK. You can look at it if you want to see it; but if it does not refresh his recollection, there is no point. We are not doing it on the cagey side.

109 Mr. FALLON. Let us mark it for identification.

Mr. MARKER. The reporter will note that this document which I am now offering, the Government's Exhibit for identification No. 7, is a cablegram to Sir Maurice Bonham Carter, Chairman, Scophony, Limited, dated December 1, 1944, from Arthur Levey, Joseph Swan, and Franklin Field.

Mr. PICKERING. And may the record show the fact that it is a photostat of what purports to be a cablegram, which is not the original document.

(Cablegram referred to marked "Government's Exhibit No. 7" for identification.)

Q. Mr. Elcock, does Government's Exhibit No. 7 refresh your recollection?

A. I can't remember specifically from seeing that cablegram.

Q. But you remember discussing the request or the problem posed?

A. I do not recall it; no.

Q. You do not recall whether that was discussed by the Board?

A. No.

110 Mr. MARKER. I now offer for identification as Government's Exhibit No. 8, a cablegram to Arthur Levey from Sir Bonham Carter, dated December 9, 1944.

(Cablegram referred to marked "Government's Exhibit No. 8" for identification.)

Mr. FALLON. I think the record should show, Mr. Marker, that this also was a photostatic copy of what purports to be a cablegram. There are various unexplained markings on Plaintiff's Exhibit 8 for identification.

Q. Mr. Elcock, you have examined Government's Exhibit No. 8 for identification?

A. I have read it, yes.

Mr. MARKER. I will read this into the record.

Mr. PICKERING. I object to reading this cablegram into the record. It has not been admitted into evidence; it is incompetent; it is not the best evidence. There is no evidence here authenticating it in any way, shape, or manner. Contrary to counsel's statement in the record, it is not a cablegram. It is a photostat of what purports to be a cablegram, and it is a mutilated copy of whatever it is.

111 Mr. MARKER. Your objection is noted, and I will now put it in the record.

"GOVERNMENT'S EXHIBIT 8

WESTERN UNION CABLEGRAM

(Form)

Received at NBM 24 Intl., via MH-London 79 Dec. 8. (Delivered 3 P. M.)

1944 DEC. 9 P. M. 12:40.

NLT ARTHUR LENEY,

527 Fifth Ave., N. Y. K.

Board considered your cables first and third December recommending appointment counsel Stop Employment funds for

this purpose would require approval authorities. Stop. Even if approval obtained Board disinclined make such appointment as feel you as director can represent British Company and can consult us on any point of doubt. Stop. Not convinced that counsel unacquainted with all conditions would add to our protection except on purely legal matters. Please inform Augstein.

BONHAM CARTER.

527 Levey. SCA 1947."

112 Q. You have testified that this does not refresh your recollection.

A. Yes.

Q. It does not?

A. No.

Q. You do not recall the Board advising Mr. Levey that he can continue to act as Director and represent the British Company?

A. You are quoting?

Q. In effect.

A. Can continue; is that in the cable itself? I mean, you specifically said words "can continue."

Mr. MARKER. I'm sorry.

The WITNESS. I might have read that as specific instruction; not continuing instruction.

Q. Which reads "That you as director can represent."

A. Yes.

Q. Mr. Elcock, were you served with a copy of the complaint in this action?

A. Yes.

Mr. PICKERING. In your copying Government's Exhibit 8 into the record over objection, I want to caution you to copy it exactly as it is written, with the spelling of the names as they appear (addressing the reporter).

113 Q. Exhibit 1 of the Government's complaint is a copy of agreement dated July 31, 1942, between yourself, Scophony, Limited, General Precision Equipment Corporation, and Television Productions, Inc., is it not?

A. Yes.

Q. Therefore, you were a party to that agreement, were you not?

A. As mortgagee; yes.

Q. Looking at the end of that agreement, that agreement is signed on your behalf by Arthur Levey as attorney in fact, is it not?

A. It is not shown here.

Q. Do you remember whether you yourself signed that agreement?

A: No; I could not say that.

Q. You do not remember?

A. No.

Q. Do you remember whether or not it was in fact signed by Arthur Levey as your attorney in fact?

A. I do not remember that.

114 Q. I show you a copy of that agreement which was produced by you in answer to the subpoena.

A. This is not out of my own files. It was handed to me by the Company's solicitors, before I left England. It does not say about attorney in fact.

Q. It says attorney in fact. Does that refresh your recollection that this agreement was drawn by you?

A. No. Those agreements were drawn by American counsel and I relied on American counsel. They only wanted my consent because I was the mortgagee of the Company.

Q. Was the agreement signed in the United States?

A. I do not recall that.

MR. FALLON. Before we go on, will the reporter read the answer to the second last question?

(The reporter read the following answer: "No. Those agreements were drawn by American counsel and I relied on American counsel. They only wanted my consent because I was the mortgagee of the Company.")

MR. FALLON (continuing). I move to strike out everything after the word "No," as unresponsive, and it is obviously hearsay and incompetent.

MR. PICKERING. I join in that.

115 Q. Mr. Elcock, I ask you again to look at Exhibit No. 1 to the complaint in this action, and ask you whether it there appears that Arthur Levey signed on your behalf as attorney in fact?

MR. PICKERING. I object to the question as irrelevant. It speaks for itself, and the answer will elicit no further evidence of any kind or character.

MR. BLAIR. I would like to have the record show that when counsel for the Government was asking the prior question of Mr. Elcock, that he, Mr. Elcock, was looking at a mimeographed copy of the complaint, and at page 7 of Exhibit 1, which is blank, and was not looking at page 6 of Exhibit 1, to which counsel for the Government is now referring.

MR. MARKER. That is correct.

Q. Mr. Elcock, you have now looked at page 6.

A. Yes.

Q. Does that refresh your recollection as to whether or not you signed the agreement?

A. The document shows that it was signed by Arthur Levey.

Q. Do you recall authorizing Arthur Levey to act on your behalf?

A. No.

116 Q. Do you know whether those agreements that are attached to the complaint were negotiated on behalf of Scophony, Limited, by Arthur Levey?

A. I believe so.

Q. And pursuant to his negotiations with General Precision and Paramount Pictures and Television Productions, Inc., the agreements that are attached as exhibits to the complaint resulted?

Mr. FALLON. I object.

Mr. PICKERING. I object to that question as leading, incompetent, and calling for a conclusion.

Mr. FALLON. Also as not based on any evidence or testimony of negotiations.

Q. Mr. Elcock, answer that question.

A. Will you read it again, please? There is a lot of confusion.

(The reporter reads the question: "And pursuant to his negotiations with General Precision, Paramount Pictures, and Television Productions, Inc., the agreements that are attached as exhibits to the complaint resulted?")

117 Mr. FALLON. And it is further objected to on the ground that it appears from the agreement that one of the parties, Paramount Pictures, is not a signatory.

A. I will have to ask you to read it again. It is a bit involved. Read it again.

(Stenographer reads the same question.)

A. There is an expression used, "pursuant to his negotiations." Can I answer it in my own way?

Mr. MARKER. Go ahead.

The WITNESS. This agreement, Exhibit 1, was entered into by the English Company and myself as mortgagee as the result of negotiations carried out by Arthur Levey.

Q. Prior to the execution of the agreements attached as exhibits to the complaint, was Scophony, Limited, doing business in the United States?

Mr. BLAIR. What is that question? Will you please read it?

(Question repeated by the reporter.)

Mr. PICKERING. I object to that as incompetent, calling for an opinion on a question of law.

A. Scophony, Limited, at the time I was connected with the Company, or during the time that I was connected with the Company, has never carried out any business in America.

118 Mr. BLAIR. By America you mean the United States?

The WITNESS. The United States.

Q. Prior to the execution of these agreements, did Scophony, Limited, have television equipment in the United States?

A. Yes.

Q. Did Scophony, Limited, own patents registered in the United States?

A. So far as I know; yes.

Q. Did Scophony, Limited, have any representative in the United States prior to the making of these agreements?

A. I can only speak from the time I was connected with the Company, and my recollection is, the answer is no; from the date I was connected with the Company.

Q. How did the equipment arrive in the United States?

A. That was before my connection with the Company.

Q. You know it was here?

A. Obviously it was here.

Q. Mr. Elcock, you testified yesterday that you loaned Scophony, Limited, the sum of 20,000 pounds?

A. Yes, sir.

119 Q. What is the equivalent of that in American money?

Mr. FALLON. That is objected to.

Mr. PICKERING. As of what date?

A. At the present date it is \$80,000. I do not know what it would have been then. It might have been \$100,000.

Q. You have no knowledge of how the equipment of Scophony, Limited, arrived in the United States?

A. It was before I was connected with the Company.

Q. Do you have any knowledge of how it arrived here?

A. No. It was before I was connected with the Company.

By Mr. POLLACK:

Q. What was the equipment doing here during the period that you were connected with the Company, Mr. Elcock?

A. I don't know.

Q. Was any use being made of it?

A. I don't know.

Q. Was it in the storehouse?

A. I don't know.

Q. Was anyone representing Scophony, Limited, using that equipment for any purpose in this country?

A. There was no one here to use—no representative of Scophony to use it, as far as I recall. I may date all this from the time I became interested in the Company.

120 Q. I am not too familiar with the case; but will you tell me what date it was that you came in?

A. I do not recall. I said as far as I remember, I was associated with the Company in December 1941; and I then added that I believed I had some discussion going back the previous three months. It is very difficult without records.

Q. Did the Scophony Corporation of America have any studio here subsequent to your connection with the English Company?

Mr. BLAIR. You say Scophony of America?

By Mr. MARKER:

Q. Did Scophony, Limited, have any studio in this country for the purpose of exhibiting television equipment?

A. Since my connection, as far as I recall, no.

Q. Did you know that Scophony, Limited, had at any time had a studio in the United States?

A. No; only hearsay.

Q. Do you know whether Scophony, Limited's equipment was demonstrated in the United States?

A. I could not state specifically as to that.

121 Q. Do you know whether a showing of Scophony equipment was made in an American theater?

A. Not to my recollection.

Q. Mr. Elcock, you are a Director of Scophony, Limited, are you not?

A. Yes, sir.

Q. Are you elected by the stockholders at large?

A. Yes.

Q. Is there any provision of any agreement between you and Scophony, Limited, that requires your being a Director of Scophony, Limited?

Mr. PICKERING. I object to that as not the best evidence, without the contents of the document.

A. I think you ought to be a little more specific. I think I already answered the question. I do not recall the terms of the agreement.

Q. I am going on grounds we went into yesterday, and I can refresh your recollection.

A. I do not recall such an agreement. I remember you asked me about 100 A shares, and I told you.

Q. I asked you yesterday if the 100 A shares carried with it any right to elect directors, and you answered no; is that correct?

122 A. No. I did not give a specific answer, because I was not sure. I do not believe so.

Mr. MARKER. At this time I offer Government's Exhibit No. 9 for identification, a copy which purports to be a directors' Re-

port of Scophony, Limited, as of December 1943, together with a notice of a meeting to take place on December 20, 1943.

(Paper referred to marked "Government's Exhibit No. 9" for identification.)

Mr. BLAIR. I think the record should show it is a photostat. You said it is a copy; but I think it shows it is a photostat.

Mr. PICKERING. I think the record should also have shown that this does not purport to be the complete document, and it is one page which has been torn off from the complete document.

Mr. MARKER. We will annex the other page.

The WITNESS. This little bit on there does confirm that it is a true copy, if we put them together; yes.

Mr. PICKERING. I object to Government's Exhibit No. 9 for identification on the ground that it is incompetent and
123 not the best evidence, not properly authenticated; not binding upon the defendant whom I represent.

Q. Mr. Elcock, Government's Exhibit No. 9 for identification reads in part as follows—

Mr. PICKERING. I would like to object, and I request a continuing objection to any testimony of the witness with respect to Government's Exhibit No. 9 for identification upon the grounds urged against the exhibit. May I have a continuing objection?

Mr. MARKER. Yes.

Q. "Mr. W. G. Elcock requires to be re-elected pursuant to the provisions of Article 94." Mr. Elcock, would you explain the provisions of Article 94, please?

Mr. PICKERING. I object to that as calling for a conclusion, incompetent, hearsay, and not the best evidence.

A. I can't quote Article 94; but if you are prepared to accept what I believe it to be, Article 94 would provide that in the case of a vacancy arising on the Board—this is what I assume—that
124 in the case of a vacancy arising on the Board of Directors, the remaining directors have the right to make an appointment, but such an appointment has to be confirmed at the next annual meeting. Is that all right? Is that all right? That is what it must be. I can't quote you the article; but that is the only thing it could mean.

Mr. BLAIR. Does Article 94 pertain to the bylaws?

The WITNESS. Yes; to the Articles of Association; they are really the same as bylaws here.

Q. Whom did you replace as a director?

A. I can't tell you that. Does it show there? Does it say who died during the year? That I can't remember.

Q. Mr. Elcock, your explanation would not exactly seem to coincide with the word "re-elected." This provides for the re-

election of Mr. Elcock, not replacement of Mr. Elcock for somebody else.

A. I did not myself make it clear, then. The purport of Article 94. My election would be to fill a vacancy for someone who ceased to be a director by either death or resignation.

Mr. BLAIR. At some time prior?

The WITNESS. Yes; during the course of the year subsequent to the previous annual meeting.

125 Mr. BLAIR. Which would have been in March?

A. The Company was very late in completing its accounts.

Mr. MARKER. I object to counsel coaching the witness.

Mr. BLAIR. I was attempting to clarify this because there seems to be a good deal of confusion.

Mr. MARKER. Mr. Elcock stated that he explained Article 94 by stating that Article 94 provides that when a vacancy occurs on the Board it empowers whoever has the power to make a replacement, and that replacement is made.

The WITNESS. It is not whoever. It would empower the rest of the directors; the rest of the directors on the Board.

Q. To nominate a new director to replace?

A. Yes.

Q. If that were the case, then that new director would be elected or selected for the first time, would he not?

Mr. PICKERING. Re-elected at the annual meeting.

126 A. Under the Article, that would only be to the next annual meeting, and then he would have to come up for reelection, the same as the man Walton, who would have served three years, whatever it is, under the bylaws, and came up for reelection.

Q. Continuing the examination on Government's Exhibit No. 9, which is a Notice of Meeting, it provides in part that the Notice of Meeting be "(2) To re-elect retiring Directors." This document is a notice of a meeting of Directors for the election of Directors, but it reads that "You are required to be re-elected." Do you still maintain your explanation of Article 94?

A. I gave you the reading of Article 94, as I would recall it, to be that I was elected during the year. My election would only be for a period until the next annual general meeting, and that my reelection had then to come before the shareholders in the annual general meeting.

Q. Mr. Elcock, you testified that during your recent visit to the United States you conferred with Mr. Hines, Mr. Raibourn, and Mr. Levey. Have I forgotten anybody that you mentioned yesterday?

A. Yes; and Mr. Rinear.

Q. And Mr. Rinear.

A. Could we take it again: Mr. Hines, Mr. Rinear, Mr. Leyey. I see Mr. Cherry. And I said Mr. Raibourn.

127 Q. Did you discuss the affairs of Scophony Corporation of America, and the interest of Scophony, Limited, therein?

Mr. FALLON. The same objection as made yesterday.

Q. Or any other individual?

Mr. FALLON. Same objection as made yesterday to this entire line of questioning as dealing with events subsequent to the beginning of the suit.

Mr. PICKERING. I join in the objection.

Mr. FALLON. Will you read the question?

(The reporter reads the question: "Did you discuss the affairs of Scophony Corporation of America, and the interest of Scophony, therein?")

Mr. FALLON (continuing). That calls for a yes or no answer.

Q. With any other individual?

Mr. BLAIR. And in that you include counsel, Sloan, and myself. It is broad enough to include anybody.

Q. Other than counsel?

Mr. FALLON. That calls for a yes or no answer.

A. No.

128 Q. You did not?

A. No.

Q. Mr. Elcock, who is Solomon Sagall?

A. He was originally connected with the Company.

Q. With Scophony, Limited?

A. Yes.

Q. What was his connection?

A. I believe he was Managing Director.

Q. Was he sent to the United States by Scophony, Limited, as its representative?

A. I can't answer that. That is before my connection with the Company.

Q. You do not know whether or not he was?

A. No. May I say that when I saw him I did not discuss Scophony Corporation of America. I have discussed Scophony, Limited:

Q. Scophony, Limited?

A. Scophony, Limited; but I have not discussed Scophony Corporation of America. It is the point you made. I took you specifically.

Q. In discussing the affairs of Scophony, Limited, did you discuss how the affairs of Scophony, Limited, relate to the affairs of Scophony Corporation of America?

129 A. No.

Q. In what connection, with the affairs of Scophony, Limited, did you discuss with Mr. Sagall?

A. His brother, through a syndicate—shall I use the words “through a syndicate”—has acquired my 100 A shares.

Q. Approximately how much time have you spent with Mr. Sagall?

Mr. FALLON. I am sure that all these discussions are since the beginning of the suit. My objections are continuing on the whole line.

A. Yes. I think I have seen him three times.

Q. Where?

A. Once at lunch, once at his offices, and once at cocktails.

Q. In New York City?

A. Yes.

Q. Did you offer to sell him the interest of Scophony, Limited, in Scophony Corporation of America?

A. Yes; subject to certain terms.

Q. What terms?

A. Subject to the settlement of the action with the Federal Department of Justice.

130 Q. In offering to sell your interest of Scophony, Limited, in Scophony Corporation of America, and subject to the condition of the settlement of the Government suit, was it not necessary for you to discuss the impasse within Scophony Corporation of America?

Mr. FALLON. I object to the form of the question.

Mr. BLAIR. I object to the form of the question. Will you please read the question back? It is objectionable.

(The following questions and answers were read to the witness:

“Q. Did you offer to sell him the interest of Scophony, Limited, in Scophony Corporation of America? A. Yes, subject to certain

terms. “Q. What terms? A. Subject to the settlement of the action with the Federal Department of Justice.”)

(And the last question was also read.)

Mr. PICKERING. I object.

Mr. BLAIR. I think that that shows that Mr. Elcock had some stock in Scophony, Limited, but he did not own any of Scophony, Limited's interest in Scophony of America, as your question is phrased—

131 Mr. MARKER. Mr. Elcock has testified that he offered to sell to Mr. Sagall Scophony, Limited's interest in Scophony Corporation of America, subject to the settlement, and that is what I stated in my question, and I said, did not that proposition necessarily involve a discussion of the affairs of Scophony Corporation of America?

Mr. FALLON. That is not what you said.

Mr. BLAIR. That is not what you said. I object to the form of the question.

Q. Answer the question, please.

Mr. BLAIR. I do not want to be technical about this; but I think anyone knows, and I think you must know, too, that that is not the proper form of a question to ask, "necessarily involve;" you asked whether he discussed it or not, and he said no.

Mr. MARKER. He said no.

Mr. BLAIR. I do not think you can go in and say it necessarily involves. He stated it did not.

Q. You have testified, Mr. Elcock, that the condition was the settlement of the Government suit. Did you explain to Mr. Sagall the circumstances within the Scophony Corporation of America?

A. I did not get your question. Did I explain the question of a suit?

132 Q. Did you explain to Mr. Sagall the conditions that you found within Scophony Corporation of America?

A. I have answered that. I did not discuss the affairs of Scophony Corporation of America. So the answer must be no.

Q. But he did make a condition to his purchasing Scophony, Limited's interest in Scophony Corporation of America, the settlement of the Government's suit?

Mr. PICKERING. I object to that question.

A. That is not what I said. I said I made a condition.

Q. You made a condition?

A. This case is being tried. I have not any right to do anything with this case on hand. That is the way I understand it.

Q. Is not the settlement of this suit an affair of Scophony Corporation of America?

A. Yes; they are the defendants.

Q. And you discussed the settlement of this suit, the possible settlement of this suit, with Mr. Sagall?

Mr. PICKERING. I object to the form of the question; assuming facts not in evidence, and as misstating the witness' testimony.

A. I would like my answer read, and I will complete it. I have already testified to that. Can I have my previous
133 answer read to me?

Mr. MARKER. Will the reporter read the previous answer to that question?

(The reporter read the following questions and answers: "Q. Did you offer to sell him the interest of Scophony, Limited, in Scophony Corporation of America? A. Yes; subject to certain terms. "Q. What terms? A. Subject to the settlement of the action with the Federal Department of Justice.")

Q. Mr. Elcock, at the time you made your loan to Scophony, Limited, Scophony, Limited was in financial distress, was it not, or financial difficulties?

A. Scophony, Limited, did you say?

Q. Scophony, Limited. There was no Scophony Corporation of America at the time you made your loan?

A. I do not think that is a very fair question on Scophony, Limited. I mean, it is a very sweeping statement, and you are asking me to comment on the affairs of a limited company. I do not want to get myself involved in actions with Scophony. It could be prejudicial to their credit.

Mr. POLLACK. This was a long time ago. It may have corrected itself.

134 Q. Mr. Elcock, I show you Government's Exhibit 1.

A. Yes.

Q. Will you read this portion indicated, just a few lines here, to yourself?

Mr. BLAIR. The answer on it, part of the same paragraph of Defendants' Exhibit 1 for identification.

A. Yes; this is more of an internal squabble inside the Company. Would you like me to enlarge on that?

Q. No. It is your examination of Government's Exhibit No. 1, that the company was in difficulties, or, to be more precise, saw the possibility of a receiver being appointed for Scophony, Limited.

Mr. PICKERING. I object to that question.

Mr. BLAIR. May I have the question read?

(The reporter reads the last question.)

Mr. PICKERING. I object to the question as incompetent, not the best evidence, and as calling for a conclusion.

A. The answer is yes; but I would like to elaborate on it.

Q. If you want to, go ahead.

A. It was more of an internal squabble for E. K. Cole, who owned the debenture and were very substantial shareholders, and E. K. Cole, director-representatives on the Board, and they got at cross-purposes with the other Directors.

Q. Was not that a fact, that some of the financial difficulties of Scophony, Limited, were in part the fact that representatives of Scophony, Limited, in the United States has incurred certain debts and obligations that Scophony, Limited, was not in a position to pay?

Mr. PICKERING. I object to the form of the question. I object on the ground that it is incompetent; that it assumes facts not in evidence; and that none of the premises set forth in the question have yet been established in the record.

A. Can I read the minutes?

Q. I will let you read the minutes. And I refer you precisely to the very last paragraph of the minutes set forth in Government's Exhibit 1.

A. I will answer it my way, that there were American debts of Scophony Company as of that date.

Q. Do you know when the debts were incurred?

A. No; it was before my time.

Q. But you knew there were debts?

136 A. It was apparently reported that there were debts.

Mr. PICKERING. I move to strike out the answer as hearsay.

Q. Did you know that court action had been instituted in the United States by creditors of Scophony, Limited, to obtain payment of those debts?

A. I did not know that.

Q. You did not know that?

A. No.

Mr. MARKER. I introduce at this time for identification Government's Exhibit No. 10, a photostatic copy of a power of attorney given by Scophony, Limited, to Arthur Levey, dated March 26, 1945.

(Copy of power of attorney referred to marked "Government's Exhibit No. 10" for identification.)

Mr. PICKERING. I object to Government's Exhibit No. 10 for identification as incompetent, and not the best evidence, not properly authenticated.

Q. Mr. Elcock, pursuant to a subpoena served upon you, you have produced certain documents and papers which you have stated are all the documents within your possession and
137 control in the United States at this time, with which you could answer the subpoena at this time; is that correct?

A. Yes, at the date of the subpoena; yes.

Q. Do these documents and papers that you have submitted to the Government in answer to the subpoena contain a copy of your agreement dated December 19, 1942, between yourself and Scophony, Limited?

A. If you will show me my file. I did not take a list. I read them on a boat; and that is all I have ever done with the papers. If you say so.

Q. Mr. Elcock, I present to you a list of the documents that your counsel has submitted to me. The document lists those papers that were transferred to me, and do you find thereon any reference to the agreement between you?

Mr. PICKERING. May I ask who prepared the list?

Mr. MARKER. Mr. Sloan.

A. Yes. It is No. 1 on the list.

Q. No. 1 on the list; that is July 31, 1942?

A. You said that, didn't you?

Q. I said December 19, 1942, an agreement between you, Mr. Elcock, and Scophony, Limited.

138 A. Will you show me where it is?

Q. I want you to find on the list of documents—

A. May I have my folder?

Q. There is your folder, with your documents.

Mr. PICKERING. Why are we wasting all this time? Is it on the list, or isn't it?

Mr. MARKER. To my knowledge it is not there.

A. I do not know what it is all about. I have not any papers. Can I ask my counsel to do it?

Mr. BLAIR. He is asking you whether or not you have given him the indenture of mortgage, or the agreement that was entered into between the Scophony, Limited and yourself, as mortgagee, or in any other capacity in 1942.

Mr. MARKER. I said, December 19, 1942.

A. It is not on this list, therefore you could not have it.

Q. It is not on this list, therefore you did not give it to me?

A. Yes.

Q. Is not that in fact the Financial Controller agreement which you yesterday testified you did not have in the United
139 States? Didn't you testify yesterday that you did not have in the United States your agreement as Financial Controller with Scophony, Limited?

A. Let us have the evidence, Mr. Marker. I handed all my papers.

Mr. BLAIR. I can say as counsel I have not seen it here. I do not think the witness understands. Are you asking now whether it is in the United States and he has not produced it, if he has? Ask him.

140 Mr. MARKER. I asked him as to his testimony yesterday.

Q. Did you testify yesterday that you could not testify as to the precise terms of your controller agreement between you and Scophony, Ltd.?

A. That is right; yes.

Q. Because you did not have that document in the United States?

A. I did not say that. I do not think I put those words because I had not the document with me.

Q. You did not have it with you?

A. Yes.

Q. Had you conveyed it to the Government with your papers?

A. All the papers I had were conveyed to the Government.

Mr. BLAIR. Where is it now?

A. It is in England, as far as I know.

Q. You do not have it in the United States?

A. I do not know where it is.

Q. Mr. Elcock, who is Charles A. Settle?

A. I never heard of him.

141 Q. You never heard of Charles A. Settle? Charles A. Settle, Lincoln Inn, London?

A. No; never heard of him.

Q. At this time, Mr. Elcock—

A. I want this made very clear. I want to add to my testimony that all my documents have been handed over to the Justice Department.

Mr. BLAIR. All the documents you have in the United States?

The WITNESS. That is right; in the United States.

Q. And on the list that was prepared by your counsel there does not appear to be the agreement dated December 19th, 1942, between you, W. G. Elcock, and Scophony, Ltd.

A. That is correct.

Mr. MARKER. I will state now that the Government has not had a sufficient opportunity to examine the documents that were produced pursuant to the subpoena of Mr. Elcock and for further examination of those documents I am going to adjourn this meeting until three o'clock on Monday. In other words, the Government is through now until Monday at three o'clock.

142 However, I think if counsel at this time have any questions to ask the witness pursuant to his testimony up to this time, they may avail themselves of the opportunity. I do not know whether or not on Monday we will have any more questions. In other words, if you gentlemen can finish up now, we may not have any more proceedings Monday. I just want to make one more observation. I have informed Mr. Elcock that on April 1st, 1946, within the United States, he was observed reading a document dated December 19th, 1942, which is purported to be a copy of an agreement between William G. Elcock and Scophony, Ltd., and the agreement was signed by Charles A. Settle of Lincoln Inn. I am through.

Mr. FALLON. I move to strike it out.

Mr. PICKERING. I move to strike it out.

Mr. BLAIR. I think that is wholly improper.

The WITNESS. I wish to state I never heard of Settle.

Mr. BLAIR. Furthermore, I would like to state on the
143 record that I have engagements at Trenton that are going to take me down there in connection with the defense of one of the defendants in an antitrust suit which has been pending there for some time and I have been informed that the chances are and the likelihood is that I will be on trial down there some-

time next week, not on Monday; but it may be that if they finish arguing that motion down there to strike certain of the Government's exhibits on Monday, I may be called upon to be present and put in a defense, and to examine witnesses for my client. I mention that. So why can't we set this down for early Monday morning instead of at three o'clock in the afternoon and get it over with.

Mr. PICKERING. I object to Government counsel's convening and adjourning this examination at his pleasure as though he was a presiding officer or some such functionary. It is usually customary to consult the convenience of counsel. It do not think you have any authority in the matter. I would like to request now an adjournment for ten minutes to determine upon the course I want to pursue.

144 Mr. MARKER. All right. We will adjourn for ten minutes. (A short recess was taken at this time.)

Mr. MARKER. Do you want to ask Mr. Elcock any questions?

Mr. BLAIR. Just one or two. I am not here representing any party defendant.

Mr. MARKER. Mr. Cherry, Mr. Ollier, do you have any questions you wish to ask Mr. Elcock at this time?

Mr. CHERRY. Yes.

Mr. MARKER. Mr. Pickering, do you have any question you wish to ask at this time?

Mr. PICKERING. Yes; a few.

Mr. MARKER. Mr. Fallon, I have asked these other gentlemen if they have any questions they want to ask Mr. Elcock. Do you have any questions?

Mr. FALLON. I have not any at this time. I cannot say whether I will have any or not, by the time the hearing is concluded.

Mr. MARKER. I explained to these gentlemen; I do not think you were here, Mr. Fallon. Everybody else was here. I

145 asked to adjourn until three o'clock on Monday to give me some time to examine these documents that were produced; but that any later time is all right with me, provided the convenience of the witness—I was thinking of Mr. Elcock's arrangements as far as I could, without giving myself any more pressure than necessary. So if you want to make it, instead of Monday, on Tuesday or Wednesday, it is a hardship on Mr. Elcock.

Mr. FALLON. What is the date of your intended departure?

The WITNESS. I must leave on Wednesday afternoon to catch my boat.

Mr. MARKER. And the mechanics of having any more testimony in which to transcribe it and have the deposition transcribed—

Mr. FALLON. May I ask on the record how long the Government has had these documents which Mr. Elcock has produced?

Mr. MARKER. They were delivered the day before yesterday. That is Wednesday afternoon.

146 Mr. FALLON. In the morning?

Mr. MARKER. The afternoon.

Mr. SLOAN. About two-thirty in the afternoon.

Mr. BLAIR. But I should say this. I have not examined the documents, of course, that the Government has; nor have I done any more than just glance through the cables; but as I understand, most of those cables were copies between Mr. Levey and Sir Bonham Carter and I imagine the Government has had all of those for some time.

Mr. MARKER. I have not had time to check, as far as I am concerned.

Mr. FALLON. May I ask Mr. Elcock if he can make an approximation how many documents are involved.

Mr. BLAIR. We have a list here.

Mr. MARKER. The list does not show how many.

Mr. BLAIR. It shows eighty.

Mr. MARKER. It looks to me like a hundred cables.

Mr. FALLON. There are not that many.

Mr. MARKER. I have not looked at it. You make your guess.

147 Cross-examination by Mr. BLAIR:

Q. As I understand it, Mr. Elcock, you have not read these exhibits, but you did look over the documents?

A. Yes; I did go through my files on board coming over; but the cables that came subsequently I have not even looked at them.

Mr. MARKER. I would like to put on the record now, Mr. Elcock, that the subpoena required your production of documents, agreements, and papers in your possession or subject to your control. You have produced those documents and papers that are now within your knowledge within the United States; but there are documents and papers which would be covered by the subpoena which are subject to your control but outside the United States, and as far as the Government is concerned, you have a reasonable time within which to produce those documents; but we still expect those documents outside of the United States to be submitted to the Government pursuant to that subpoena which is still in full force and effect.

Mr. BLAIR. Whatever he is required by law to do he will do.

148 Mr. PICKERING. I object to counsel's peremptorily adjourning this examination to Monday at three o'clock. I question his authority to adjourn and convene this examination at his pleasure. I insist that the examination proceed as pre-

viously arranged, for today, and that it be completed without adjournment. And I further state on the record that counsel's gesture that if we have any question to ask the witness at this time we may do so, is an empty one, because it is our right to reserve our cross-examination until the direct is completed. We may have a question at this time which we will not want to ask when we get through and there may be a multitude of other questions that we will want to ask when we know what the witness's entire testimony says.

Mr. FALLON. I join in this.

Mr. PICKERING. I do not consent to an adjournment and I insist that we have a ruling of the Court that this examination shall proceed.

Mr. FALLON. I join in Mr. Pickering's statement.

149 Mr. MARKER. We can call up the Court and find out who is sitting and we will have a Court ruling. I believe that the Court will grant it. I think I am entitled to do this. I think that in the first place, at the beginning of the examination, it could have been adjourned several days until such time as I felt it necessary to permit me to examine those documents. And if you want to do that, we can arrange to meet, say, at two o'clock, over at Foley Square, and go before the Judge to decide the question.

Mr. BLAIR. Before we adjourn until such other time as an adjournment is had to see the Judge, I would like to ask the witness two or three questions which relate to the document, I believe, of December 19th, 1942.

Cross-examination by Mr. BLAIR:

Q. As I understand it, you did not bring such a document with you?

A. No.

Q. To this country?

150 A. No.

Q. Have you had it sent here?

A. No.

Q. Since you have arrived?

A. No.

Q. Did you have it sent here prior to the time of your arrival?

A. No.

Q. Have you seen such a document since you have been in this country?

A. I have not read such a document.

Q. Have you seen one?

A. I do not recall. It seems to me to strike some chord. I do not know what it is. I have not read any copy of my Financial Controller agreement, nor has it been in my possession since I have been here.

Mr. MARKER. Mr. Pickering, do you have any objection if any other counsel wants to question the witness at this time?

Mr. PICKERING. I have no control over any other counsel.

Mr. MARKER. Then I think that completes the examination at this time, subject to further adjournment either till this afternoon or until some later date.

Mr. PICKERING. I think we should fix a time to go before the judge, either before or after lunch.

Mr. MARKER. Do you want to fix it on the record? My thought now is to call over to the courthouse to find out what Judge will be sitting to hear this question and to find out if he is available and if so, what time he is available.

(Mr. Marker leaves the room and returns shortly.)

Mr. MARKER. Gentlemen, there is some difficulty as to the time. Judge Leibell is the ex parte Judge, but the secretary suggested that we contact her at a quarter of two and I make the suggestion that we meet at the courthouse outside of Room 110, which is the room that the Judge is sitting in, at a quarter of two, and I will try to call up then and speak to her and see what arrangements we can make about going to Judge Leibell. Is that agreeable all around?

152 Mr. PICKERING. All right.

(At this time a recess was taken.)

153 2:00 O'CLOCK P. M., ROOM 110, UNITED STATES COURTHOUSE, NEW YORK, N. Y.

Present: Honorable VINCENT L. LEBELL, District Judge.

Argument and ruling

Mr. PICKERING. This is an application in the action of the United States of America vs. The Scophony Corporation. It is an anti-trust suit and one of the defendants is a British corporation. I do not represent that corporation. A director of that corporation came to this country some few weeks back and the Government obtained an order for his examination before issue joined. The motion for the order was made on April 5th. I did not appear on the order but counsel for the witness and for the Government adjourned the motion and then agreed upon an order which fixed the examination for yesterday, April 25th, and we commenced the examination. The examination was commenced yesterday and at the close of yesterday's session we inquired of Government's
154 counsel what their plans were with respect to the progress of the examination, when they expected to complete it, and Government's counsel stated that we go on all day today and that they would complete the direct examination today. It

so happens that the witness, Mr. Elcock, has to return to London, is leaving next Wednesday. And at twelve o'clock the Government counsel simply announced, without consulting anyone at all, that that was as far as he would go today and that the examination was adjourned till three o'clock Monday.

Under these circumstances, I think Government counsel exceeded his right. It looks as if we might be either precluded to cross-examine the witness who is a Government witness subject to their control and not ours, or have our examination so limited with respect to time that it may prove to be inadequate. And I think we are within our rights in insisting that the examination proceed this afternoon and tomorrow or Monday morning, if necessary, to complete it.

155 Mr. MARKER. Your Honor, the Government has asked for this adjournment in order to have time to examine the documents that were produced by Mr. Elcock pursuant to the subpoena which required both his personal presence and the presence of documents. These documents were produced in part on Wednesday and another part yesterday morning. In preparation for Mr. Elcock's deposition, I have not had time to examine those documents, which include quite a number of telegrams, from fifty to one hundred and possibly more and I simply ask this adjournment now in order to have time to examine those documents and I have asked an adjournment, your Honor, until Monday, preferably Monday afternoon. The Government has no desire to limit cross-examination or any other application.

The COURT. How urgent is the return of the witness to London?

156 Mr. MARKER. This is simply a matter, as I understand it, Your Honor, on the question of reservations. He has reservations to sail until next Friday evening and it would be most convenient for him if he leaves Wednesday afternoon. And the Government is quite willing to do all that it can to expedite the matter to follow in with that convenience.

The COURT. Is he going by train or boat?

Mr. MARKER. The boat leaves on Friday.

Mr. BLAIR. If I may speak, I am personal counsel to the witness and he is being examined here in his capacity as an individual. I want to state that the witness is sailing from Halifax; that I understand it is very important for him to be back. It so happens that I am engaged in trial in Trenton. A Government antitrust suit has been pending there and I have been informed that my witnesses perhaps may be called early next week and that would mean that I could not be present at this deposition because I will have to be there.

The COURT. Why can't you examine him tomorrow or Sunday?

Mr. BLAIR. And I might say this. As far as these exhibits, as far as those documents which were produced pursuant to subpoena, practically all of them were given to him Wednesday 157 afternoon at three o'clock; and yesterday he was given, I should say, about twenty cablegrams, all of which he called for, and had been received after the witness had come to this country and subsequent to the commencement of this action. And I am further informed that most of these cablegrams or copies of which have been, I should say, in the files of the company here for some time and that counsel for the Government certainly had access to them, and he may indeed have the very copies in his own files.

Mr. MARKER. Your Honor, if what counsel says is true as to these documents, and to which I make no denial, then when we reconvene on Monday, as far as the Government is concerned, it would at most be a half a day.

The COURT. Counsel says he has an engagement on Monday in Trenton.

Mr. MARKER. He does not have it on Monday.

Mr. BLAIR. That is correct; on Tuesday. I am arguing a motion on Monday.

Mr. MARKER. I am quite agreeable, Your Honor, if they 158 want another week. It is simply a question of the witness's time.

The COURT. How numerous are they?

Mr. PICKERING. They fill one red folder like this.

The COURT. Are they all cables?

Mr. BLAIR. A great majority of them are.

The COURT. Are any of them agreements?

Mr. BLAIR. I do not recall; but I think if there are any agreements there, he has copies of those.

Mr. MARKER. Those are all cables.

Mr. BLAIR. I might say this, if Your Honor please. They are copies of cables that were sent by the President of the American company to the British company, or cables which have been received from the British company.

The COURT. If you already have copies of these from the file of the other defendant—

Mr. MARKER. Your Honor, I have not had a chance to compare. All I know, counsel says I have copies. I do not know what knowledge counsel has of what documents I have.

159 The COURT. I suppose you might know something about what you have. I think the answer to it is this: That you hold an examination. You are ready to appear tomorrow, and your witness?

Mr. BLAIR. Yes.

The COURT. Yes. This afternoon and tomorrow morning; and then appear at twelve o'clock noon; or if you want to make it at two o'clock.

Mr. MARKER. It is all right with me, if Your Honor orders it, if it is all right with these gentlemen.

The COURT. I would say at one o'clock. Get lunch before you start and work all the afternoon, and if necessary you may work the following day, Sunday, and then you may have your cross-examination on Monday. Counsel, just tell me, can you meet those dates? Can you meet the time schedule I have suggested?

Mr. MARKER. Yes; I think it can be done.

The COURT. Suppose you follow that time table. Make a note of it now, that the examination of the witness will be adjourned until one o'clock tomorrow. At what room?

160 Mr. MARKER. We have been taking it at my office, Your Honor, 30 Broad Street, the Office of the Antitrust Division.

The COURT. At the office of the Antitrust Division, at 30 Broad Street, where the examination has been in progress, and that the examination will continue through the afternoon. If the direct examination is not completed, it shall be resumed on Sunday, at 2 p. m. And that the cross-examination of the witness shall begin on Monday at 10:00 a. m. in the office of the Antitrust Division. And then you will complete it and the witness will be able to get his boat. Follow that time schedule.

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UNITED STATES OF AMERICA

v.

SCOPHONY CORPORATION OF AMERICA

14TH FLOOR, 30 BROAD STREET,

NEW YORK; NEW YORK,

Saturday, April 27, 1946, at one o'clock p. m.

Appearances: (Same as before).

WILLIAM GEORGE ELCOCK, previously sworn, testified further as follows:

Mr. BLAIR. Mr. Marker, I believe Mr. Elcock wants to add to his testimony of yesterday.

The WITNESS. On thinking over, I would like to add that I have given interviews, that is, when I first arrived, with the Trade Press and that my comments were quite restrained, have been published, and I also saw a Mr. William Shew and a Mr. Nassau, from Hartford, who are large stockholders of the English Company. I had lunch with them and they asked me about the English Company, particularly with regard to the proposed new issue of

163 capital about which I advised them, and they also asked me about the time it would take for them to get their English stock; the stock certificates. They were anxious about that, and they raised the question of the future of the American Company; but I was unable to give them any details, and the matter was left that I would probably would see them again. And no further interview has taken place.

Mr. FALLON. I move to strike the entire statement out on the grounds of my continuing objection to conversations subsequent to the institution of this suit, and on the further ground of incompetency.

Mr. PICKERING. I join in the motion.

Direct examination by Mr. MARKER:

Q. Did you make any similar offer to these gentlemen such as you reported having made to Mr. Sagall, namely, to sell them Scophony, Limited's interest in SCA? Did you discuss with them the internal situation of the Scophony Corporation of America?

A. Mr. Nassau had a copy of the SCA complaint. As the matter was subjudice, I could not discuss it.

Q. Mr. Elcock, you have testified that pursuant to your 164 agreement between you and Scophony, Limited, as Financial Comptroller, you have never acted on any matter whereby you exercised the powers given to you in the nature of that agreement. Is that a correct summary of your testimony?

Mr. FALLON. I think, Mr. Marker, that the testimony would speak for itself. I do not see why we need this method of proceeding. The testimony is of record, and whatever it is, it is.

Mr. MARKER. I think I can give the witness an opportunity to recollect further.

Mr. BLAIR. What page of the record are you referring to?

Mr. MARKER. I made no reference to the record, Mr. Blair. It is not necessary. Mr. Elcock yesterday or the day before stated on his recollection that he has never acted as Financial Controller.

The WITNESS. I think I used the word "powers."

Mr. FALLON. My comment is only a suggestion, in the hope of saving some time. I think if we spend time in discussion of what has already been testified to, we will really be wasting time to no good purpose.

Mr. MARKER. Mr. Fallon, I am as anxious as any 165 one to expedite this matter.

Q. On page 16 of the record, Mr. Elcock, you stated that you never exercised any of the powers under the Financial Controller agreement; is that correct?

A. As an individual; yes.

Q. As Financial Controller?

A. Yes.

Q. You also stated on page 15 of the record that you had the power to deal with finance, decide on what shall be manufactured, and dictate the general policy of the Company, that is Scophony Limited. That is correct, is it not?

A. Yes; that is true.

Mr. PICKERING. Subject always to the approval of the Board?

The WITNESS. Subject always to the approval of the Board. I remember saying that particularly; and there were certain officials—

Q. Was there any occasion that you can recall when a matter relating to finance of Scophony Limited, or its assets was before the Board or before you as Financial Controller?

166 Mr. BLAIR. Will you please read that question back again, Mr. Reporter?

(The reporter read the last question.)

Mr. BLAIR. I object to the form. I think the question is meaningless, Mr. Marker; "before the Board," you have two questions in one.

Mr. MARKER. I will rephrase the question.

Q. You have testified that you had the power to deal with finance?

A. Yes.

Q. Will you explain in your language what the word "finance" means?

A. A question of spending money; whether they should buy new equipment, or whether they should enter into any project with a financial commitment that I might not be satisfied with.

Q. Would the sale of equipment come within your power?

A. It would if I wished to exercise the power.

Q. Would the sale of patents owned by Scophony, Limited, be considered assets with which you would be concerned and which you would pass upon?

A. If I decided to exercise my powers; yes.

167 Q. Under your agreement with Scophony, Limited, would not such a matter, as a necessity, have to be referred to you?

Mr. PICKERING. I object to that as argumentative, calling for a conclusion, not the best evidence, considering a document which is not of record.

Mr. BLAIR. I object as to form.

A. It would come before the Board of Directors, and if, as Financial Controller, I wished to veto it, I had the power to do so.

Q. You had the power?

A. I would regard myself as having the power to do so.

Q. Therefore, if such a matter came up before the Board, whether you decided to veto it or not, your nonvetoing of any such matter would be an act of your power as Financial Controller, would it not?

Mr. BLAIR. I object to that. That is a legal conclusion. You are asking the witness to give a legal conclusion, and I object to the form.

Mr. PICKERING. I object.

Mr. MARKER. I will restate the question.

Q. Did matters come up before the Board relating to the finance or the sale or purchase of equipment or assets of Scophony, Limited, while you were present as a member of the Board and as Financial Controller?

A. We must have done over these periods of years.

Q. You must have considered these matters and joined, because of this action taken by the Board?

Mr. BLAIR. I object.

Mr. PICKERING. I object to that as argumentative.

Mr. BLAIR. I object to the form. You can ask him, did he?

Q. Did you participate in acting upon such matters that were presented to the Board of Scophony, Limited?

A. It is a very general question. If I were present at the Board, at a meeting, the answer would be yes.

Q. On or about June 19, 1945, was Scophony, Limited, in particular the Board of Scophony, Limited, notified officially by the Scophony Corporation of America that a proposed loan to Scophony Corporation of America by its A and B stockholders had been made, and Scophony, Limited, as the holder of a substantial share of A shares of Scophony Corporation of America, was asked to participate in such loan?

Mr. PICKERING. Are you asking him about an oral or a written notification?

169 A. I can't recall that.

Mr. BLAIR. Do not answer.

Mr. PICKERING. I object to the question as incompetent, not the best evidence, hearsay, and calling for the contents of a document which is not of record and has not been received in evidence.

Q. Do you recall whether such written notice was received?

A. I can't recall.

Mr. PICKERING. Same objection.

Mr. MARKER. I offer for identification as Government's Exhibit No. 11, the copy of what purports to be a cablegram to Arthur Levey from Sir Maurice Bonham Carter dated June 27, 1945, which document is one of those which were produced by Mr. Elcock, pursuant to a subpoena duces tecum.

(Copy of cablegram to Arthur Levey dated June 27, 1945, marked "Government's Exhibit No. 11" for identification.)

Q. Mr. Elcock, now that you have examined Government's Exhibit No. 11, does that refresh your recollection of such action by the Board of Scophony, Limited?

A. I can't recall it specifically.

170 Mr. PICKERING. I would like to record an objection to Government's Exhibit for identification No. 11, in the event it should be offered in evidence, in that it is incompetent, is not properly authenticated, and not the best evidence.

Q. Do you recall whether the making of a loan by the shareholders of Scophony Corporation of America to Scophony Corporation of America was discussed by the Board?

A. I have not any recollection.

Q. You have testified, have you not, that one of the problems of the impasse in the affairs of the Scophony Corporation of America was the matter of finance?

A. Yes.

Q. Was one of the means of obtaining finance for Scophony Corporation of America the question of a loan or further loans from the stockholders to Scophony Corporation of America?

A. Will you repeat that? I was listening to specific words. When you are saying Scophony Corporation of America—Will you repeat it?

Mr. BLAIR. Will you read that to me?

(Reporter reads the last question.)

Mr. BLAIR. By "means" do you mean probability? I do not understand your "means."

171 Mr. PICKERING. "Means" is supposed to be a question, as I understand it.

The WITNESS. May I answer it?

Mr. BLAIR. Wait.

Mr. MARKER. I will rephrase the question.

Q. The problem of obtaining additional moneys for Scophony Corporation of America is one of the situations creating the impasse in the affairs of Scophony Corporation of America, is it not?

Mr. FALLON. I object to the form of the question. It calls for a conclusion.

A. I have not said that.

Q. What have you said in connection with the question of finance?

A. I said the problem of finance was one of the causes of impasse. That is suggesting a solution to it which I know nothing about.

Q. What is the problem of finance?

A. Lack of it.

Mr. BLAIR. By "Lack of it," do you mean lack of funds?

The WITNESS. Lack of funds.

Q. Therefore the question of obtaining such funds is
172 part of the problem, and affairs of Scophony Corporation
of America to which you have devoted your activities in
the United States; is it not?

Mr. BEAIR. Just a minute. Will you read that one again?

• (The reporter reads the last question.) -

Mr. BLAIR (continuing). I was not going to object until you
tacked on that "to which" clause. Read it again.

(Question again read by the reporter.)

A. My answer is no.

Q. You have not concerned yourself with the problem of Sco-
phony Corporation of America obtaining additional funds in
order to operate?

A. No.

Q. Mr. Elcock, do you know that the Class B stockholders did,
in around June 1945, make a loan to Scophony Corporation of
America?

A. No; I have already answered that, I think, Mr. Marker.

Mr. MARKER. I do not think I asked that question before.

Q. You have no knowledge that they made a loan of approxi-
mately \$15,000 which was to mature in 18 months;
173 is that correct?

A. I don't know.

Mr. BLAIR. You mean, knowledge at the time; or present knowl-
edge; at the time when the loan was made, or whether he knows
it now?

Q. Now or then?

A. I don't know it.

Q. You don't know it now?

A. No.

Q. In your discussions with Mr. Hines or Mr. Raibourn, did
you discuss with them the question of their advancing additional
sums to Scophony Corporation of America?

Mr. FALLON. The same continuing objection.

A. My discussions were on general terms which involved the
settlement of the Federal suit; at the same time, a comprehen-
sive—to make it quite clear, that all discussions were subject
to the settlement of the antitrust suit.

The WITNESS. Have I to give specific terms in view of that?
(Addressing Mr. Blair.) After all, this action is being heard,
and it is quite clear that, and I want to make it with
174 strong emphasis, that every discussion was based solely on

this action being settled and the consent decree being obtained. If that being the case, and you still ask me that; but I want that to be clear.

Q. Understanding all that, Mr. Elcock, did you discuss with them the possibility of their advancing additional funds to Scophony Corporation of America?

Mr. BLAIR. I object to the question. I think that you are going into matters here, Mr. Marker, which relate to discussions of possible compromise or a settlement of this action; discussions among the parties here of what means they should pursue to attempt to resolve this litigation pending. I do not think that is a proper matter which is subject to inquiry.

Mr. PICKERING. I join in the objection.

Mr. MARKER. I am not inquiring into moneys that were asked to be presented to settle any case. Scophony Corporation of America is a corporation in the United States. It has stockholders. Presumably there are at least indications if not testimony, that Scophony Corporation of America is in some financial
175 distress. Mr. Elcock is in the United States as the representative of a substantial shareholder in Scophony Corporation of America, and has testified to conferring with other shareholders, and I have asked him whether or not he has discussed the question of contribution of additional money to Scophony Corporation of America by the B-stockholders.

Mr. BLAIR. I want to say this: This action was started in December. All of these conversations that you are referring to, if they did take place, took place sometime between the 24th of March of this year and today. And I do not think it is the part of an officer of the United States Government to bring in these discussions, when obviously they are for some purpose other than involved in this antitrust dispute. What that purpose is, I don't know; but I think it is too bad that this subject has to come up at this time. I would think that you would confine your question to the matters that are charged in the complaint here. If you are taking this witness' deposition, I assume in a situation like that that counsel for the plaintiff would attempt to prove by the examination of the witness the allegations of his complaint.

176 All these matters relate to events subsequent to the filing of that complaint, and I object to that.

Mr. FALLON. I would like to ask Mr. Marker what his purpose is in going into this line of questions. If you would care to state it on the record.

Mr. MARKER. In answer to Mr. Blair's objection, my present inclination is to note the objection, and ask Mr. Elcock to answer the question. And I am just going to make one statement in answer to Mr. Blair's objection. This complaint is in equity,

not in law, Mr. Blair, and we are seeking here an injunction, and we are going to proceed along these lines and on that basis. I will ask the stenographer to note the objection and to repeat the question, and ask Mr. Elcock to answer the question.

If you object and want to go before the Court to answer this question, then we will have to do that. I personally see no substance to your objection or to similar objections.

Mr. BLAIR. I can tell you this much, Mr. Marker: I have been attending an antitrust dispute in Trenton, and the very objection

I am making Mr. Emmerglich, as special counsel for the
177 Government, is making in connection with some of the proof General Electric is putting in. It is in equity and we are before a court, Judge Foreman. So whether or not it has any substance or not, we will let Judge Foreman decide at that action, and a Judge in this action decide this.

Mr. FALLON. I regret to say I will have to ask counsel for the witness to ask his witness not to answer the question until we can get a ruling on it, unless Mr. Marker can satisfy us what his purpose is in going into this matter. I think it is highly improper. As I stated before, it has nothing to do with the merits of the suit, and I renew my request.

Mr. MARKER. If that seems to be the consensus of opinion, my suggestion is at this time, if it meets with the consent of you gentlemen, to hold this question in abeyance until the end of the direct examination, at which time the question will be presented to the Court on Monday. I don't very much whether the court is sitting this afternoon.

Mr. FALLON. Do I take that as a refusal to state what the purpose is?

178 Mr. MARKER. It is a refusal, and we are consenting to hold this in abeyance as a final question, and that we proceed to other matters at this time until we get to such other—

Mr. PICKERING. Impasses.

Mr. MARKER. Impasses. If counsel object to that, then we will just have to stop now and proceed no further. But my suggestion is, in order to make more progress, that we put this question in abeyance and proceed.

Mr. BLAIR. Let us have a short recess.

Mr. MARKER. Is the general consent to recess?

Mr. FALLON. Just for a few minutes.

Mr. BLAIR. Just for about four minutes.

Mr. FALLON. What is the question?

(The following question was read by the reporter: "Understanding all that, Mr. Elcock, did you discuss with them the possibility of their advancing additional funds to Scophony Corporation of America?")

(A short recess was taken.)

(Discussion off the record.)

(The reporter again read the question read before recess and in addition the following comments thereafter, ending with Mr.

Marker's comment, " * * * to Scophony Corporation of 179 America by the B-stockholders.")

A. As part of the general terms of settlement; yes.

Q. Mr. Elcock, yesterday you testified, did you not, that you were unaware of the financial difficulties of Scophony, Limited in the United States, did you not?

Mr. BLAIR. I object to the form. That assumes that there were financial difficulties. Has there been any proof of that?

Mr. MARKER. I will rephrase the question.

Q. On or about October 1941, you entered into arrangements whereby you were going to loan money to Scophony, Limited, did you not?

A. Yes.

Mr. BLAIR. Will you read the question and answer, please?

(Reporter read the last question and answer.)

The WITNESS. That is a wrong answer. Discussions; arrangements.

Q. I show you Government's Exhibit No. 1 and ask you, were arrangements entered into on or about October 1941?

A. Yes. I have answered this in yesterday's testimony, or two days ago.

Mr. BLAIR. What is your answer; yes?

180 The WITNESS. Yes. It is in the minutes; yes.

Q. At the time you made the arrangements to make this loan to Scophony, Limited, did you know that Scophony, Limited had incurred debts in the United States?

A. I testified yesterday that I knew that there were debts and I used the word "creditors"; that there were American creditors.

Q. Did you know that these creditors had instituted proceedings to collect these debts in the courts of the United States?

A. I can't recall it.

Mr. MARKER. I offer Government's Exhibit No. 12 for identification, what purports to be a copy of a cablegram from Mr. Arthur Levey to Sir Maurice Bonham Carter, dated February 2, 1942, and that this document is one of the documents produced by Mr. Elcock pursuant to the subpoena duces tecum.

(Copy of cablegram from Arthur Levey to Bonham Carter dated February 2, 1942, marked "Government's Exhibit No. 12" for identification.)

Mr. PICKERING. I object to Government's Exhibit No. 12 for identification as incompetent, not properly authenticated, and as hearsay.

181 Q. Mr. Elcock, having examined Government's Exhibit No. 12, does that now refresh your recollection that action by creditors of Scophony, Limited, in the United States to collect debts from Scophony, Limited, had been instituted?

Mr. PICKERING. Same objection as urged against the exhibit itself.

A. I do not recall it.

Q. You have no—

A. I do not recall it.

Q. Mr. Elcock, you testified, did you not, that the occasion for your loan of 20,000 pounds to Scophony, Limited, arose out of an internal difference within Scophony, Limited, between Scophony, Limited, and E. K. Cole, did you not?

A. I did not say that. I said the Directors on the Scophony Board representing E. K. Cole. I don't know what word I used. Put it that way, "or were opposed to the rest of the Directors." The words "Director or representative" I did use. The other word I can't recall.

Mr. BLAIR. You said "cross-purposes," at page 135.

182 Q. Didn't you describe that difference of opinion, whatever it was, as an internal squabble?

A. Yes. May I just say here—it has probably arisen out of a typographical error—but here on page 135 I said "as a Director," and not "directly."

Mr. MARKER. I do not see how it affects my question. I do not at this time want to agree to any change on the record as it now stands, at least as to that word, without further consideration.

Q. All I ask you at this time is whether or not you, at page 134 of the record, referred to that difference on the Board of Scophony, Limited, as an "internal squabble"?

Mr. BLAIR. The record so states, Mr. Marker. I do not see what you can prove by—

A. Yes.

Q. Now, would you please explain the nature and substance of that internal squabble.

A. I don't know. I was not connected with the Company then.

Q. You loaned money to a Company on a situation that arose because of an internal squabble, but you were not apprised of the nature of that internal squabble?

A. It did not affect the question as to whether there was
183 a justification for me to make a loan. It was just my business judgment.

Q. Mr. Elcock, it appears from previous testimony that you made an appearance as an alternate director on the Board of Scophony, Limited, in October 1941, as an alternate for Mr. Oscar Deutsch; is that correct?

A. Yes, sir.

Q. What was your connection with Mr. Deutsch?

A. He was my colleague and at the time he was dangerously ill. In fact he died on the 4th of December 1941.

Q. Will you please explain what you mean when you say he was your colleague?

A. We were codirectors of Odeon Theaters, Limited.

Q. Did you have any other position in Odeon Theaters, Limited, other than a director?

Mr. FALLON. Are not we going a little far afield, Mr. Marker? I just mention that in the interest of the record and of time.

A. If I recall rightly, my description, there was an executive director. What that means I never knew. I do not think anybody else ever did; but that was my description in the Service Agreement.

Q. Did Odeon Theaters, Limited, own any interest in Scophony, Limited?

184 A. I do not recall; but they were creditors.

Q. They were creditors?

A. Yes.

Q. But as Executive Director of Odeon Theaters, Limited, and at one time serving as alternate Director of Scophony, Limited, you had no knowledge, prior to your loan, as to the nature of the internal quarrel; is that correct?

A. Can I take you at one point? You said "at one time," instead of "a time." Is there any difference? I mean, I was alternate Director, as disclosed by those minutes; but I do not recall the alternate Director at any other time. The answer to your question is, I do not know the nature of the dispute with the Board.

Mr. MARKER. I offer as Government's Exhibit No. 13 for identification a cablegram dated April 11, 1946, to Mr. Elcock, from Bonham Carter, which is one of the documents produced by Mr. Elcock pursuant to the subpoena duces tecum.

(Cablegram to Mr. Elcock from Bonham Carter dated April 11, 1946, marked "Government's Exhibit No. 13" for identification.)

185 The WITNESS. This is the original. I think this should be photostated.

Mr. BLAIR. We shall offer the photostat in lieu of the original, and it is agreed that when the photostat of this exhibit is submitted that the same be marked as if it were the original.

Stipulation

Mr. MARKER. Will you gentlemen agree to stipulate that wherever photostats of Government's exhibits are substituted in lieu

of the original exhibit, and may be so marked as such exhibit, that there will be no question raised as to such photostat copy being an accurate copy of the original document?

Mr. PICKERING. At the request of Government's Counsel—

Mr. MARKER. Excuse me, at the request of Mr. Elcock's counsel, who wants to submit the photostats.

Mr. PICKERING. You asked for the agreement.

Mr. MARKER. It does not make any difference.

Mr. PICKERING. I am willing to state that where an original document or a document purporting to be an original is marked for identification in this record, and a photostat is substituted therefor, I will not object to the photostat being used in lieu of the originals; but in so stipulating I do not waive any objection to the proper authentication and identification of the original document.

Mr. FALLON. I join in that statement.

Mr. PICKERING. If you make the original document admissible, why, you can use all the photostats you want, and we will raise no question about it. If it is not originally admissible, why, the same objection will go to the photostat.

Mr. CHERRY. It is so stipulated.

Mr. MARKER. But it is understood that you will not question the fact that the photostat is an accurate copy of the original?

Mr. PICKERING. That is right. Now, my stipulation is limited to those instances in which a purported original is first produced on this hearing.

Mr. MARKER. I suppose the reporter ought to make a special reference in the minutes as to which exhibit was so introduced and later photostated.

Mr. BLAIR. Let me at this point hand you a photostat of Government's Exhibit No. 4 for identification.

(Photostat copy of Government's Exhibit No. 4 for identification now marked for identification, and the original returned to Mr. Blair.)

Q. Mr. Elcock, in the cablegram introduced in Government's Exhibit No. 13, Bonham Carter states to you—

Mr. PICKERING. Before you go ahead, I want to object to Government's Exhibit No. 13 on the ground it is incompetent, not properly authenticated, hearsay, and upon the further ground that it relates to matters subsequent to the date of the complaint, and therefore should not be gone into at this time.

Mr. FALLON. I join in that objection.

Mr. BLAIR. I object to any interrogation of the witness based upon that Exhibit 13 for identification, on the ground that it deals with the confidential matters relating to the settlement of this action, as well as the attempted settlement of the so-called impasse,

all of which, as the witness testified, is bound up, part and parcel with each other.

Mr. PICKERING. I think that is another matter that should be reserved with the earlier question, and on which we are going to ask for a ruling of the Court.

188 Q. "Your admirable memorandum also received." Mr.

Elcock, it does not appear that a copy of any such memorandum was produced pursuant to the subpoena duces tecum. Do you have any copy of any such memorandum?

A. No; I have not a secretary here, and I wrote it in longhand and I sent it.

Q. It was a longhand memorandum?

A. Yes.

Q. And it was not dictated?

A. No; and I have no copies of my cables.

Q. In general, what was the substance of that memorandum?

A. Report—

Mr. BLAIR. I object to that.

(Discussion off the record.)

A. It related to the settlement.

Q. It related exclusively to the settlement?

A. Yes.

Q. No other matters other than the question of the settlement were discussed in that memorandum?

A. One other point. I asked him to send me some money.

189 Q. Mr. Elcock, you have testified that during the visit last fall, or, to be more precise, in or about October 1945, of Mr.

Hines to England, that you conferred with him only once; is that correct?

A. Yes.

Mr. MARKER. I offer as Government's Exhibit No. 14 for identification a document which purports to be a photostatic copy of a letter dated October 8, 1945, from Sir Maurice Bonham Carter to Mr. Augstein.

(Photostatic copy of letter dated October 8, 1945, from Carter to Augstein, marked "Government's Exhibit No. 14" for identification.)

Mr. PICKERING. I object to Government's Exhibit No. 14 for identification, upon the ground that it is incompetent, not properly authenticated, and hearsay.

Q. Mr. Elcock, I read in part from Government's Exhibit No. 14—

Mr. PICKERING: I object to any interrogation with respect to Government's Exhibit No. 14 for identification, or any reading thereof in the record, upon the ground urged against the document itself.

Q. "As you are aware, Mr. Hines of GPE has recently
190 paid a visit to this country and my colleague, Mr. Elcock,
and I have had several meetings with him and also our
General Manager, Mr. Wikkenhauser." Does that refresh your
recollection, Mr. Elcock, meeting with Mr. Hines more than once?

A. I only recall one meeting, and I do not think there were any
other meetings, so far as I was concerned.

Q. In other words, on the basis of your recollection you believe
that Mr. Carter's statement to Mr. Augstein was inaccurate?

A. Yes. He had several, which I said in evidence yesterday.

Q. The document reads, "Mr. Elcock and I have had several."

A. So far as I recall, I only had one meeting; and that is an
incorrect statement.

Q. Therefore, on the basis of your recollection, the statement is
incorrect?

A. Yes.

Q. Sir Maurice Bonham Carter further advised Mr. Augstein
that we, meaning Carter and Mr. Elcock, apparently, "have estab-
lished more friendly relations with him"—Mr. Hines, apparently,
"and it has become clear that on many sides our business interests
are alike."

191 Mr. Elcock, would you say that was an accurate descrip-
tion of the nature of your conversations?

Mr. PICKERING. In addition to my objection, which I can assume
is continuing as to any interrogation with reference to this docu-
ment, I object to this question as the form, and on the ground that
it is argumentative, that it is composed mainly of counsel's conclu-
sion, and what his constructions of the documents are.

Mr. BLAIR. I object to it as to form also.

Q. Will you answer?

A. You have asked two questions.

Mr. MARKER. Will you repeat the questions, please [addressing
reporter]?

Mr. BLAIR. Can't we start this all over?

Mr. MARKER. I will rephrase the question.

The WITNESS. Yes, please.

192 Q. Mr. Elcock, the letter offered as Government's Exhibit
14 for identification further continues: "As a result we have
established very friendly relations with him and it has become
clear that on many sides of our business our interests are alike."

Mr. Elcock, is it clear that by the words used by Sir Maurice,
when he says "As a result we have established," by the "we" he
means himself and Mr. Elcock and Scophony, Ltd.?

Mr. BLAIR. I object to the form of that question.

Mr. PICKERING. I join in the objection.

Mr. BLAIR. You are trying to ask this witness here what Sir Bonham-Carter said; what he meant.

Mr. MARKER. Are you stating this on the record?

Mr. BLAIR. Yes. I am putting my objection on the record and I object to this form.

Q. Mr. Elcock, I have read—the last portion of Bonham Carter's letter that I have read, which in substance states that
193 very friendly relations have been established with him—the “him” I assume to be Mr. Hines, from the context of the letter, and which further states “That it has become clear that on many sides our business interests are alike,” I now ask you, does that description of the nature of your conversations that occurred between you, Sir Maurice Bonham Carter and Mr. Hines, was that an accurate description?

Mr. PICKERING. I object to that question on the ground previously urged and on the further ground that it constitutes an erroneous construction and misinterpretation of the letter and it is unintelligible and incompetent.

Q. Answer it.

Mr. BLAIR. I object to the form of it.

A. Do you want me to answer it? Those observations?

Q. Do you want the stenographer to repeat the question?

A. No. Those observations would not apply to the relationship between Mr. Hines and myself, other than that I liked the man when I met him.

Q. Then you agree with the part that says “We have established friendly relations?”

194 A. I said I have—I was not present but on one meeting as far as I recall. I was not present when anything was discussed about the product. That would be when Wikkenhauser, who was the general manager—I would not know what General Precision make or what Scophony make, other than it was war work.

Q. In other words, you are now testifying that from your recollection of the conversations with Mr. Hines when you were present that it has not become clear that on many sides your interests with Mr. Hines were alike?

A. Not on my meeting.

Q. Not when you were present. Mr. Elcock, in your previous testimony you pointed out that the document offered as Government's Exhibit No. 8 for identification, which purported to be a copy of a cablegram to Bonham Carter from Arthur Levey, you pointed out that it instructed Mr. Levey that as director he could represent the British Company in the United States, but that it did not state that he could continue to represent—

Mr. BLAIR. I object to that. Are you asking him to tell you whether the document contains——

195 A. No, Mr. Marker.

Mr. BLAIR. Words such as you just read. That is what your question is.

Mr. MARKER. Will you read the question.

(The question was read by the stenographer.)

The WITNESS. That other "that" I do not see.

Mr. MARKER. May I change that, the last part: But it did not state that he, Mr. Arthur Levey, could continue.

(Discussion off the record.)

Mr. MARKER. You want me to rephrase the question?

Mr. BLAIR. Will you please rephrase the question?

Mr. MARKER. Very well. I will rephrase it:

Q. Mr. Elcock, at page 112 of the record of this deposition you pointed out, did you not, that Government Exhibit No. 8 contained the words that Mr. Levey "Can represent"——

A. Yes.

Q. And did not state "Can continue to represent" the British company?

196 A. Yes.

Q. Mr. Elcock, do you know whether prior to the date of the Government's Exhibit No. 8 for identification which was dated December 9th, 1944, whether or not Mr. Levey had been authorized to act as the representative of the British company in the affairs of the Scophony Corporation of America?

Mr. PICKERING. I object to the question and to any interrogation of the witness with respect to Government Exhibit No. 8 for identification, upon the grounds which were urged against the exhibit itself; the exhibit being incompetent, any query with respect thereto is incompetent.

A. I can't recall it. I have no recollection.

Q. This is December 9th, 1944, Mr. Elcock, and are you now testifying that before December 9th, 1944, you do not recollect any time when Mr. Levey was authorized to act for Scophony, Ltd. in the United States?

Mr. BLAIR. I object to the form of the question. Will you read the question back? I think Mr. Marker will agree.

(The stenographer read the last question.)

Mr. BLAIR. I may say that I do not understand
197 what you mean.

Mr. MARKER. I will rephrase the question.

Q. Do you recollect whether before December 9th, 1944, Mr. Levey was authorized to act on behalf of Scophony, Ltd., in the United States?

A. I can't recall other than that time; when he had power to sign the original agreement.

Q. In July 1942?

A. Whatever the date is. I mean, I have seen that in writing here in the evidence; but I cannot recall any other occasion. I cannot state there was not an occasion. Now you ask me, and I cannot recall it.

Q. You do not recall whether Mr. Levey had any authority of a continuing nature to represent Scophony, Ltd., in the affairs of Scophony Corporation of America?

A. We have Exhibit No. 10 that was produced yesterday; but I do not recall the terms of it. If we refresh ourselves—I do not remember the date of it.

Q. That is dated after?

A. We reached yesterday and we adjourned, I think, when we got to that stage.

Q. We are now discussing, Mr. Elcock, a period prior to 198 the power of attorney which is set forth in Government's Exhibit No. 10, and after the signing of the agreement that were attached as exhibits to the complaint—that is a period approximately between July of 1942 until March 26th, 1945—during that period, do you recall whether Mr. Levey had a continuing authority to represent Scophony, Ltd., in the affairs of Scophony Corporation of America?

A. I don't recall.

Mr. MARKER. And I offer as Government Exhibit No. 15 for identification a photostat of what purports to be a copy of a letter dated December 14th, 1944, from Maurice Bonham Carter to Otto Augstein.

(Photostat of copy of letter dated December 14th, 1944 from Maurice Bonham Carter to Otto Augstein is marked "Government's Exhibit No. 15" for identification.)

Mr. PICKERING. I object to Government's Exhibit No. 15 for identification on the ground that it is incompetent, and not properly authenticated.

Q. Mr. Elcock, having examined Government's Exhibit No. 15, does that refresh your recollection that Mr. Levey had a continuing authority to represent Scophony, Ltd., in the affairs of Scophony Corporation of America?

Mr. PICKERING. I object to any interrogation of the witness with respect to Government Exhibit No. 15 for identification upon the same ground as urged against the original exhibit.

A. I do not recall. That is a document sent by Sir Maurice Bonham Carter to someone outside of the company.

Q. You do not recall any such continuing authority?

A. No. Could I add that it is a document that is—

Q. I did not ask you that, Mr. Elcock. The document in that record will speak for itself. I am just asking you if it refreshes your recollection as to that fact and you said no.

A. No.

Q. Mr. Elcock, you have testified, have you not, that prior to the arrangement that was made between you, personally, and Scophony, Ltd., which was described in the minutes of the meeting for October 1941—

Mr. BLAIR. I do not think the testimony is clear on that. I think that he testified the other day that that was not the final arrangement that was made in that—

Mr. MARKER. I did not finish my question.

Q. That preceding that time there were negotiations for several months?

A. By me?

Q. Prior to October 1941, which refer to certain arrangements, did you testify or do you now recollect that there were negotiations leading up to the arrangements there described?

Mr. BLAIR. Would you show him his testimony, please?

A. In my testimony I refer to two or three months, if that is referring up to December.

Q. Two or three months prior to—

A. December.

Q. Mr. Elcock, you testified yesterday as to your recollection. Surely your recollection today is what you recollected yesterday, and I am only questioning you about substance, not precise language. Is it a fact that prior to October 1941 there were negotiations for several months leading up to the minutes or the arrangements recited in the minutes of October 1941?

A. There must have been negotiations; but why several months. I cannot accept that.

Q. How long were they?

A. I can't recall.

Q. What did you yesterday state, several months, two or three months?

A. Two or three months; but that related to another question. It did not relate to that. It related to another question.

Mr. BLAIR. If you will refer to the record, you will find that he testified that the best date—

Mr. MARKER. You want this on the record?

Mr. BLAIR. Yes. Put it on the record. It appears on page 6 that he testified regarding the loan that was made and he said his best recollection was that it was December 1941 and that there had been negotiations going on for about three months before that. And that he also testified that the arrangements that were

set forth in the exhibit were not the final arrangements that had been made. It is all quite clear. If you want to go back all over again it is another matter. If you want to ask him whether he wants to correct his testimony or whether he was mistaken, that is something else.

Q. It also appears from the record, does it not, Mr. Elcock, that upon being shown Government Exhibit No. 1 and that it was dated October 21st, 1941, you corrected thereby your prior testimony that your first association with Scophony, Ltd., occurred in December of 1941; is that correct?

Mr. BLAIR. I object to this form of interrogation. I think the proper way to proceed is to refer the witness to the page of the record to which you are now calling his attention rather than from general statements. We have the minutes here in front of us and I think that is the way to proceed and I object to your proceeding in any other manner.

Q. Mr. Elcock, were you asked, on page 3 of the record, when you first became associated with Scophony, Ltd.?

A. Yes.

Q. Did you answer that your best recollection was, around or about December 1941?

A. Yes.

Q. When Government Exhibit No. 1 for identification was shown to you, did you at that time testify that, now having a written record before you, that you were modifying your previous recollection, so that your earliest association with Scophony, Ltd., occurred at least in October 1941?

A. Yes.

Q. I am referring to top of page 7.

A. Yes.

Q. Examining page 6, did you testify that there were about three months of negotiations prior to your entering into arrangements with Scophony, Ltd.?

A. Yes.

Q. Did you thereby testify that there were three months of negotiations preceding December 1941 or October 1941?

A. December 1941.

Q. In other words, there was only one month of negotiations prior to October 1941?

A. I do not recall that. I have given approximate periods.

Q. In your direct examination on periods of three months' negotiations, was that three months of negotiations prior to December 1941 or October 1941?

A. As far as I recollect, it was December 1941.

Q. On negotiations prior to an arrangement, Mr. Elcock,

referring to Government's Exhibit No. 1, does it appear from there that in October 1941, you had made an offer to Scophony, Ltd.?

A. Yes.

Q. Was that offer in the nature of a final offer sufficient to bind you upon their acceptance?

A. No.

Mr. BLAIR. I object.

Q. You mean, in October 1941, the Board of Scophony, Ltd., was passing resolutions on a tentative arrangement with Mr. Elcock?

Mr. PICKERING. I object.

Mr. BLAIR. I object.

Mr. PICKERING. To this witness testifying what the Board meant to do.

Mr. BLAIR. What is the purpose of this line of questions?
(Discussion off the record.)

Mr. BLAIR. Ask the question to explain the circumstances relating to the loan.

205 Q. Mr. Elcock, would you please explain the circumstances preceding your loan to Scophony, Ltd.?

A. I have said that there was an internal dispute with the original lenders, E. K. Cole, Ltd., and I offered to loan the company money, which loan I made about December 1941. The eventual terms of the loan were not settled at the time but there were three documents. There was a mortgage document. There was the financial controller agreement already referred to and which I now learn was dated December 1942; and an option agreement with regard to further shareholding which was, I believe, settled in 1945. I think those are the facts we have.

Q. What was the approximate date of the mortgage?

A. That I can't recall.

Q. You said you made a loan?

A. It would be about December 1941.

Q. About December 1941, were not some formal papers entered into at that time?

A. I have testified that I took an assignment of an existing form of mortgage which was in usual English bank form.

206 Q. That is the mortgage you are referring to. Therefore, you are now placing the approximate date of the mortgage around December 1941?

A. As far as I can recollect.

(Statement by Mr. Blair off the record.)

Q. Mr. Elcock, Exhibit 1, dated October 21st, 1941, states that the Board was acting to accept an offer made by Mr. Elcock. Can you now testify as to how long prior to this act in October 21st,

1941, that you were in negotiation with Scophony, Ltd., in connection with that loan?

A. I can't recall; but it would be but a short time, I should think.

Q. How short a time; a month, two months?

A. Without documents it is not fair; I can't state.

Q. You have estimated other matters, Mr. Elcock. You have estimated that there were three months. You testified that there were three months, you testified the other day; and all I am asking now is your present estimate of negotiations.

Mr. BLAIR. I object to estimates. If you ask for his best estimate, he can give it; but I do not think he can be called upon to speculate.

207 Q. Would you give your best recollection, Mr. Elcock?

Let me read that, and see if there is any indication. It is five years ago. I can't recall.

Q. Mr. Elcock, you testified that Odeon Theaters, Ltd., of which you were the executive director, was a creditor of Scophony, Ltd. Can you recollect about when that indebtedness was incurred?

A. I can only say that it was before the war. That would be before the 4th of September 1939. I could not give you any date before that. I am speaking as an ex-executive director of Odeon Theaters, Ltd.

Q. After the establishing of that date between the Odeon Theaters, Ltd. and Scophony, Ltd., did you acquaint yourself with the affairs of Scophony, Ltd.?

A. No.

Q. Did you know that Scophony, Ltd., had sold at least one television receiver to an Odeon Theaters, Ltd., theater?

A. Yes.

Q. Did you know that with the coming of the war television transmission stopped?

A. Do I know that television transmission stopped? The answer is yes.

208 Q. Did you know that the stopping of that television transmission prevented further showings of television broadcasts in the Odeon Theater?

A. Yes.

Q. Did you know that thereafter, Scophony, Ltd., decided to send television equipment to the United States, where television transmission was still continuing?

A. Did I know what Scophony was doing? No.

Q. You did not know that they decided to send equipment to the United States?

A. No.

Q. Did you know at the time you made a loan to Scophony, Ltd., that Scophony, Ltd., had television equipment in the United States?

A. Yes.

Q. Do you know whether Scophony, Ltd., sold that equipment that it had in the United States?

A. I don't know.

Q. You do not know what happened to that equipment?

A. Oh, yes; when it was transferred to Scophony Corporation of America. You better be more specific. Some equipment was sold to Scophony Corporation of America.

Q. Some what?

A. Some equipment.

Q. The equipment that Scophony, Ltd. had here?

A. Some.

Q. Some. You do not know whether it was all or part?

A. No.

Q. You know that some equipment was sold?

A. Some equipment was sold.

Q. Mr. Elcock, do you know whether since the making of the agreements which are attached as exhibits to the complaint in this action, whether there has been official correspondence between Scophony, Ltd., and Scophony Corporation of America?

Mr. PICKERING. I object to the form of the question, the characterization of "official." I do not know what that means.

Q. Do you know whether the agreements attached as exhibits to the complaint provided for the transmission of patents and patent information between Scophony, Ltd. and Scophony Corporation of America?

210 Mr. FALLON. I object to the form of that question.

A. I recall that the agreements deal with the patents and interchange of information.

Mr. FALLON. I move to strike out the answer as calling for the contents of a written document.

Mr. PICKERING. I join in the motion.

Q. Do you know whether in fact such communications were sent back and forth to Scophony, Ltd. and Scophony Corporation of America?

Mr. FALLON. I object to the form of that question.

Mr. PICKERING. So do I.

Mr. MARKER. I will rephrase it.

Q. Relating particularly to the transfer of patent applications and information.

A. As far as I recall, the Defense Regulations of Great Britain prevented any such communications.

Q. From April 1942 to date?

A. From the time I was connected with the company.

Q. To date?

A. Yes.

211 Q. You do not know that there were any such communications?

A. I believe that the Defense Regulations of Great Britain prevented any such communications.

Mr. FALLON. I move to strike the last answer out as incompetent.

Mr. MARKER. I offer at this time as a government exhibit for identification, No. 16, a photostatic copy of a letter to Scophony Corporation of America from Scophony, Ltd., dated March 20th, 1945.

(Photostat of letter to Scophony Corporation of America from Scophony, Ltd., dated March 20, 1945, is marked "Government's Exhibit No. 16" for identification.)

Mr. MARKER. And I offer for identification as Government Exhibit 17 a letter to Scophony Corporation of America from Scophony, Ltd., dated January 31st, 1945.

(Letter to Scophony Corporation of America from Scophony, Ltd., January 31st, 1945, is marked "Government's Exhibit No. 17" for identification.)

212 Mr. PICKERING. I object to Government Exhibits Nos. 16 and 17 for identification upon the ground that they are incompetent, not properly authenticated, and a further objection that they are incomplete. They are meaningless without the enclosures.

Q. Mr. Elcock, do you know whether Scophony, Ltd., ever requested Scophony Corporation of America to procure any material or equipment in the United States for Scophony, Ltd.?

A. I have no recollection.

Q. Do you know whether or not Scophony Corporation of America ever acted as the agent for Scophony, Ltd., in obtaining any material or equipment in the United States pursuant to Scophony, Limited's request?

Mr. FALLON. I object to the question.

Mr. BLAIR. I object to the form of the question. Will you read the question back again, please?

(The stenographer read back the last question as recorded.)

Mr. BLAIR. I object to that. Why don't you ask him whether they ever did. I object to characterization.

Mr. PICKERING. I object.

213 A. I don't know.

Q. Do you know whether during 1944 an American company approached Scophony, Ltd., with respect to having the

American company exploit Scophony, Limited's patents in the United States?

Mr. PICKERING. May I have that question read?

(The stenographer read the last question.)

Mr. PICKERING. All right.

A. Do I know? I don't know.

Q. Do you know whether any American company in 1944 was advised by Scophony, Ltd., that any question of exploitation of Scophony, Ltd.'s patent in the United States would have to be referred to Scophony Corporation of America which had taken over all the rights of Scophony, Limited's patents in the Western Hemisphere, including the United States?

Mr. FALLON. I object to the form of the question.

A. I don't know.

Q. You don't know. Mr. Elcock, do you have any present dealings with General Precision Equipment Corporation or with Paramount Pictures, Inc., or with Television Productions, Inc., other than matters relating directly to the affairs of Scophony Corporation of America?

Mr. FALLON. By "present" do you mean subsequent to the day of the commencement of this suit? I have the same continuing objection.

Mr. PICKERING. I join in the objection.

Mr. BLAIR. I was not clear whether you meant him individually or whether you referred to Scophony, Ltd.

Mr. MARKER. For clarification purposes, I mean Mr. Elcock as an individual other than Scophony, Ltd.

Mr. BLAIR. I was not saying Mr. Elcock or Scophony, Ltd. I mean, what you were saying by your question, when you say other than Scophony, Ltd., I take it that you mean Mr. Elcock individually.

Mr. MARKER. As an individual or in a representative capacity; but I do mean Mr. Elcock as a representative of any other party if it so happens to be the case.

The WITNESS. May I have the question?

215 (The question was read.)

A. The answer is no, with one reservation, which is purely technical. I have some cinemas in England which book pictures occasionally from Paramount; but that is purely technical. I want to be quite clear about it. That is the only thing. And I do not book personally; through one or two of my companies we show Paramount Pictures the same as we show anybody else's.

Q. Are you now the owner of any theaters in England, Mr. Elcock?

A. I am the owner, shareholder of companies that own some eleven cinemas.

Q. Do you own or have an interest, that is, own any share in any other business or enterprise relating to the motion picture or television field?

A. No.

Q. That is, other than companies having some eleven cinemas and having an interest in Scophony, Ltd., that is your only interest in motion pictures?

A. I am only interested in the exhibition of motion pictures in England.

216 Mr. Elcock, you have testified that you have sold your stock interest in Scophony, Ltd., have you not?

A. Yes.

Q. Also the option to continue to purchase 10% of the shares of Scophony, Ltd.?

A. Yes.

Q. But are you now a director of Scophony, Ltd.?

A. Yes.

Q. In other words, you continue to be a director of Scophony, Ltd.?

A. Yes.

Q. Subject to reelection annually?

A. Not annually. I think a third of the directors come up every year. So I think a third of the representatives—I am not sure what the bylaws say; but I am subject to reelection by the shareholders.

Mr. BLAIR. At the time your term expires?

The WITNESS. Yes.

Q. Are you still Financial Controller of Scophony, Ltd.?

A. Yes. My agreement is still in existence.

Q. And when does that expire?

217 A. As far as I recollect, at the end of 1951.

Q. Mr. Elcock, on April 1st, 1946, at approximately 1:15 p. m., to be exact, you were observed here in New York City reading a document which was dated March 20th, 1946, which was a legal document apparently referring to an agreement between William G. Elcock and Scophony, Ltd., which had been made on December 19th, 1942? This document that was dated March 20th, 1946, was signed by Charles A. Settle, Lincoln Inn. So far as I can ascertain, no such document of that date has been produced pursuant to subpoena duces tecum. Can you recall that document?

A. I said yesterday that I did not bring a document dated December 1942, into this country; neither had it been sent to me; neither had it been in my possession.

Q. I am afraid you misunderstood my question.

Mr. MARKER. Will you read the question, please?
(Question read by reporter.)

The WITNESS. No. I have no recollection.

Mr. FALLON. If I may, I do not think the record is too clear as to which document Mr. Marker is referring to.

218 Mr. MARKER. I will state that I am referring to document dated March 20th, 1946, which I described in my question. The document is a document, March 20th, 1946, which is a legal document which related to an agreement dated March 19th, 1942, between yourself and Scophony, Ltd. The particular document I am now referring to was dated March 20th, 1946.

Mr. BLAIR. And not December 1942.

Mr. MARKER. I am referring now to a document dated March 20th, 1946.

Mr. BLAIR. 1946?

Mr. MARKER. Which I said was not produced pursuant to the subpoena duces tecum:

The WITNESS. I was on the ocean then.

Mr. MARKER. I am sorry. The date is April 1st, 1946.

Q. You were in the country in March?

A. I was on the ocean from the 17th and arrived here on the 24th. I have no knowledge of a document dated 1st of April 1946.

Q. The document was dated March 20th, 1946.

A. I was on the ocean.

219 Q. The document that I refer to was not signed by you, Mr. Elcock. It was signed by Charles A. Settle, Lincoln Inn. I stated that you were observed reading that particular document on April 1st, 1946.

A. I do not know such document.

Q. You do not recall that document?

A. No.

Q. You do not know where that document might now be?

A. No.

Q. You have no information you can give us as to that document?

A. No.

Mr. MARKER. I have no further questions, gentlemen. We are through as far as I know. That is my extent of the Judge's order. Do you gentlemen care to stipulate ten-thirty or eleven Monday morning. It is all right with me at ten o'clock.

Mr. PICKERING. You are through with your direct?

Mr. MARKER. I am through with the direct.

Mr. PICKERING. And there are no questions reserved for the Court?

220 Mr. FALLON. I think we disposed of those questions. You got your yes or no answer.

Mr. MARKS. I think we did, but I am not sure. However, with the reservation as to those questions which were reserved, my direct is completed.

We will now adjourn until 10:00 a. m., Monday morning.

(Whereupon, an adjournment was taken until Monday, April 29th, 1946, at 10:00 o'clock a. m., same place.)

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UNITED STATES OF AMERICA

vs.

SCOPHONY CORPORATION OF AMERICA, ET AL.

30 BROAD STREET, NEW YORK, N. Y.,

April 29, 1946, 10:00 o'clock a. m.

Appearances: (Same as previously noted.)

Mr. BLAIR. I have not any cross-examination because I am counsel for this witness. I am not representing a party here.

Mr. PICKERING. I assume that SCA and Mr. Levy will proceed with their cross-examination since it is bound to be in the nature of things in aid of the complaint, in view of their cross claims. I reserve our cross-examination until they get through.

Mr. CHERRY. I prefer to hold over till you get through.

222 Mr. PICKERING. I do not think you have that preference, in view of your position in the case.

Mr. CHERRY. I do not think that that conveys anything to the order of the examination. I do not concede that your premises are correct. As a practical fact, I am waiting the arrival of Mr. Levy with some documents; but he will not be here for awhile.

Mr. FALLON. I am awaiting the arrival of my client. I am not prepared to cross-examine at this time.

Mr. CHERRY. I would like to say on the record that the witness is Government's witness. The opportunity for cross-examination is afforded all counsel by direction of the Court to begin at ten this morning. Counsel are here present and the witness is present. Counsel for one of the defendants has chosen to state what he thinks the proper order of examination is. The counsel for another of the defendants does not accept that order.

Mr. MARKER. You might identify which counsel.

Mr. CHERRY. That is obvious from the record.

223 Mr. PICKERING. What do you think are the terms of the order?

Mr. MARKER. I think that either the codefendants agree among themselves or we may require a ruling from the Court as on examination matters.

Mr. PICKERING. SCA is the defendant first named for another thing, if that has anything to do with it.

Mr. CHERRY. Do you think that that is determining?

Mr. PICKERING. I do not know. It is just another point.

Mr. CHERRY. Without conceding that there is any implied order of priority from the order in which the defendants are named, I am willing to get on with the examination to save time and carry it as far along as I can in the absence of my client, with the reservation that I be permitted to continue on his arrival and with the understanding that other counsel will join me in saving time by proceeding with their turn of the examination. When I conclude for the time being.

224 Mr. PICKERING. I want to concede to that with the proviso that none of us is necessarily precluded. If there are further questions when we get through, I may have to ask some more questions, depending upon what develops on the record.

Mr. FALLON. I think so, too.

Mr. MARKER. Do you gentlemen afford the Government similar right, gentlemen?

Mr. CHERRY. For my part; yes.

Mr. PICKERING. I think the Government might be entitled to some redirect, depending upon what the direct develops. If any redirect is indicated, I think you are entitled to it.

WILLIAM GEORGE ELCOCK, resumed the stand, and testified further as follows:

Cross-examination by Mr. CHERRY:

Q. What is your profession, Mr. Elcock?

A. I am a chartered accountant; a member of the Institute of Chartered Accountants.

Q. And you are a director and the Financial Controller of one of the defendants, Scophony, Ltd.?

A. Of Scophony, Ltd.; yes.

225 Q. And when did you become a Director of Scophony, Ltd.?

A. I can't recollect the date.

Q. Approximately the year?

A. 1943; early in 1943, I think.

Q. And when did you assume the position of Financial Controller?

A. That date I can't give you; during 1942.

Q. And what duties have you performed as the Director and Financial Controller of Scophony, Ltd.?

A. As Director I have attended Directors' meetings; but I have never exercised the powers under my Financial Controller's agreement.

Q. Did you render services under your Financial Controller's agreement?

A. Yes.

Q. Will you tell us what they were?

A. By being available generally to the company; by my services being available generally to the company.

Q. Will you expand on that and tell us what you actually did?

A. I can't amplify it other than that I was available to the company for consultation.

226 Q. Did you actually render any consultative services?

A. I fulfilled whatever obligations I had under the agreement.

Q. Will you tell us what you did in that fulfillment?

A. To make myself available for the company.

Q. Well, did it go no further than that?

A. I think that covers it all.

Q. Will you tell us in terms of the actual activities of men of business what making yourself available constituted?

A. When the company wanted any finance, I dealt with it. When there was a question of purchasing additional plant I advised on it; when any large Government order was placed, I advised on it.

Q. Were those the categories of activities within which you participated?

A. I have given the general. You asked for some specific items, and I have given that.

Q. But turning now to your activities in finance, will you tell us what they were, precisely?

A. The company wanted some extra finance, which I
227 arranged.

Q. When did this take place?

A. I have not any dates; between from the beginning of 1942 and the end of 1945.

Q. Was that connected with the loan that was the basis for the charge that you held or was it separate from that?

A. It was in addition to the original loan.

Q. And did you procure the moneys that were lent to the company?

A. I lent the moneys.

Q. And under an agreement whereby the company agreed to pay you interest?

A. It was added to the original form of charge.

Q. And were there any other activities in the financial category in which you participated?

A. I do not recall.

Q. In the field of production, you say you advised upon the purchases of machinery. Will you specify?

A. During the whole of this period, the company was engaged solely on Government work and they required further machinery, the expenditure of which I approved.

228 Q. Was your participation in the machinery purchases limited to the approval of expenditures?

A. Yes.

Q. And what did that entail, by way of the actual steps in the procedure whereby the purchases of the machinery were contemplated, the money made available, and the purchases eventually effected? What did you do along the line? How did it come to your attention?

A. I can't recall that.

Q. I believe you said, in enumerating the fields in which you were active, that you were consulted too, on the matter of Government contracts?

A. Yes.

Q. Will you please elaborate that?

A. I had to decide whether the company was in a position to undertake large Government contracts.

Q. And what were the circumstances in which such a decision was called for, and tell us specifically how the decision was arrived at and communicated to the company.

A. Repeat it.

(The reporter repeated the last question.)

229 A. I can't recall it.

Q. Can you remember any single occasion as to which you can tell us precisely or generally what you did in that connection?

A. No; I can't recall it; no.

Q. Well, did you do anything by way of advising on the acceptance of Government contracts?

A. I can't recall any specific instance.

Q. Would it be fair to say, Mr. Elcock, that your financial controller agreement with the company was one calculated to give you control of the company rather than make your services available to the company?

Mr. FALLON. I object to the form of the question.

Mr. CHERRY. Will you repeat the question, please [to reporter].

(The reporter reads the last question.)

Mr. FALLON. It is argumentative; calls for an opinion; calls for a characterization by the witness of a written document.

Mr. CHERRY (addressing the reporter). Will you repeat the question, please.

(The reporter read the question again.)

230 A. That is a very complete legal point. That is a legal point.

Mr. CHERRY. I will accept that as an answer.

Mr. FALLON. What is the answer?

(The reporter reads the answer.)

Q. Do you have a copy of your Financial Controller agreement?

A. In England; yes.

Q. In the United States?

A. No.

Q. Does one exist in the United States, so far as you know?

A. Not so far as I know.

Q. Will you tell us what, if any, duties were prescribed for you in that agreement?

A. I have not the document and I can't answer that on recollection.

Q. Will you make an effort to procure the document when you go back to England and forward it to us here?

Mr. BLAIR. May I just say this. As I told the counsel for the Government, whatever documents are required by law to be produced here will be produced.

231 Mr. CHERRY. I ask counsel for the plaintiff and the defendants, whether it will be acceptable that if Mr. Elcock forwards to the Government or to the Court copies of documents which are referred to or identified in the course of the examination and if Mr. Elcock in an accompanying letter states that they are true copies of the originals where the originals can be presumed to be in the possession of either Mr. Elcock or the British company, will counsel stipulate that it will be Mr. Elcock's testimony that he has examined the originals, and the copies, and that the copies were accurate, and that the originals were signed by the parties or by the persons whose signatures they are supposed to bear.

Mr. PICKERING. I am not going to enter into any blanket stipulation blindly as to documents I do not know anything about, or into a stipulation with respect to which claims may be made with respect to documents that I have never heard of so far.

232 As to Mr. Cherry's specific request, I will state that if Mr. Elcock will forward a copy of this agreement as Financial Controller to the company to his counsel and his counsel will produce it with the statement on the record as to its source, I will be glad to accept that statement.

Mr. MARKER. As full authenticity?

Mr. PICKERING. I will accept any statement Mr. Blair may make. I do not know what he will make when he gets to that. If it is sufficient to authenticate, it will be; if not, it will not be.

Mr. MARKER. As I understand it, gentlemen, that applies only to this one agreement.

Mr. PICKERING. That is correct.

Mr. MARKER. And that all other documents produced by Mr. Elcock will be the original document itself or the best copy thereof that he has in his possession.

Mr. PICKERING. I am making no stipulation as to any other documents.

Mr. CHERRY. May I say, Mr. Marker, that I do not think you got from counsel for Mr. Elcock an agreement that the most authentic available embodiment of the instruments in evidence will in fact be furnished.

233 Mr. MARKER. I do not think it is necessary, Mr. Cherry, for me to enter into any stipulations with counsel to that effect. I believe that the subpoena itself would require the production of the original copy of any document that Mr. Elcock would produce and what I have tried to state is that since no stipulation has been entered into, I am merely trying to spell out the requirements under the subpoena which still remain in full force and effect except as with regard to whether or not a document—

Mr. CHERRY. Is that your understanding, Mr. Blair?

Mr. BLAIR. My understanding is that whatever documents and papers are called for by the subpoena, Mr. Elcock will produce and produce to me. If he is out of the jurisdiction, he will send them to me and I will present them to counsel for the Government pursuant to the subpoena; but I have stated several times I do not think that we are required to produce more than by law we are required to do under the subpoena and I am not making

234-5 any stipulation that will be broader than the subpoena. That is my position. And so far as this particular document is concerned, namely, the agreement which was entered into between Scophony, Ltd., and this witness regarding him becoming Financial Controller, when I receive the copy of that document from Mr. Elcock saying it is a true copy, I will come forward and so state; and I do not think there can be any question then as to having fulfilled the terms of this stipulation regarding this particular document.

Mr. MARKER. The Government agrees to enter into the stipulation for the one document.

Mr. FALLON. May we have the stipulation read?

(Discussion off the record.)

(The reporter reads the statement of Mr. Blair and the previous statement of Mr. Marker.)

Mr. MARKER. If you gentlemen cannot agree, we will have to get a court ruling, and I suggest that the question relating to the documents be held in abeyance till the end of the examination, the same as with any other question that may crop up.

I see no necessity at this point to get the Court's ruling.

Mr. CHERRY. Yes.

Mr. FALLON. I do not think that we have what may properly be called a stipulation. Mr. Pickering and I state that we would be prepared to accept any statement that Mr. Blair may make to whatever documents may be produced without waiving our objection to the merit of the document and without any commitment that any document is in fact to be produced. That is my understanding in the matter.

Mr. CHERRY. I think that not much is saved by trying to obtain an exception as to one of a number of documents and we have got to get a general ruling on all of them in any case. So, I guess my effort fails.

Mr. MARKER. The understanding is that we reserve this question till later in the taking of the deposition to present the matter to a court for a ruling. And now I think we can proceed with any further questions of Mr. Elcock.

237 Mr. FALLON. Let the record show that I have no understanding to go to court on this matter. If Mr. Cherry cares to take this matter up before the ex-parte Judge, I daresay we will all appear; but it is not my understanding that we must take the matter up with the Judge.

Q. Were you consulted, Mr. Elcock, on all major matters affecting the business of Scophony, Ltd.?

Mr. FALLON. I object to the form of the question.

Mr. BLAIR. I would like to object to the form of the question, because I think it ought to be limited to a certain period.

Mr. PICKERING. I object to the form of the question. It is self-evident that he would not know the answer, anyway.

Mr. CHERRY. I withdraw the question. Counsel is right.

Q. Were you from time to time consulted by the officers and directors of Scophony, Ltd., during the period of your Financial Controllorship?

A. Was I consulted? Yes.

Q. And how frequently did such consultations take place?

A. I have no recollection.

238 Q. Can you remember any specifically?

A. No.

Q. Can you remember anything you did as Financial Controller over the period of the past four years?

Mr. FALLON. I object to the form of the question.

A. I have stated in my evidence that I have never exercised the power given me under my Financial Controller agreement.

Mr. FALLON. The question calls for a conclusion by the witness as to the capacity in which he acted.

Q. During the period through which you held the 100 special shares, could it fairly be said that you were the largest shareholder of the corporation?

Mr. FALLON. I object to the form of the question.

A. I have not any record.

Q. Could it fairly be said that you dominated the policies of the corporation?

Mr. FALLON. The same objection.

Mr. PICKERING. I object to it on the same grounds.

239 A. It is not up to me to answer that. It is a matter of opinion.

Q. Will you give us your opinion?

A. My opinion is no.

Q. Were you not interested in the vital affairs of the company's business?

A. Yes; but I must point out to you that during the whole of the period the company has been exclusively engaged on Government work and under the control of Government departments both as to manufacturing products and as to supply of materials.

Q. Will you recall for us again the date approximately when you met with Mr. Hines and Sir Bonham Carter at the Savoy Hotel in London?

A. I can recall last autumn. I have been trying to think since, but I can't place the date.

Mr. CHERRY. That is near enough.

Q. And were you at that time introduced to Mr. Hines for the first time?

A. Yes.

Q. Will you tell us as nearly accurately as you can the conversations that took place between the persons there present?

A. I can; a general conversation.

240 Q. Well, what were the subjects discussed?

A. Conditions in America; conditions in England; future television.

Q. What was said about future television?

A. That it would take a certain amount of research work to bring it up to date.

Q. Who said that?

A. I can't recall now; probably all of us.

Q. And was it stated who was to do the research work?

A. I do not recall it.

Q. Was the American company discussed; the Scophony Corporation of America?

A. Probably on general lines.

Q. Do you say probably because you do not remember that it was discussed?

A. You asked me for a specific report of one meeting when we had dinner, and I can't recall any details. It is the first meeting that I am in.

Q. Was the American company discussed?

A. Probably.

Q. You don't remember certainly?

A. I repeat, probably.

241 Q. I take probably to be a reconstruction rather than a statement on recollection. What I would like to have is your remembrance of what took place at that meeting.

A. I can't recall.

Q. Were the affairs of the British Scophony Company discussed?

A. I can't recall it.

Q. Did you discuss with Sir Bonham Carter at any time other than at that meeting the visit of Mr. Hines to London?

A. I can't recall that.

Q. Did Mr. Hines offer any comment at this meeting on what was taking place within the company in America?

A. I have said I do not recall discussing the American company.

Q. Did you discuss the American company with the other directors of the British corporation at any time?

A. Yes.

Q. And did the subject of Mr. Hines' visit furnish any part of that discussion at any time?

242 A. I don't remember that.

Q. When was the subject of your visiting the United States on this occasion first broached?

A. On this occasion?

243 Q. Yes.

A. I think I have given in my testimony, this year.

Q. Who mentioned the subject to you, or to whom did you first mention it?

A. I can't remember that.

Q. Will you give us the earliest conversation you can recall with respect to your visit to the United States?

A. I can't quote you conversations.

Q. Well, if you can't give us the exact words, tell us what the subject was, and in general, what was said about it, and by whom.

A. I can't possibly answer a question like that. You just asked me to go back in my memory and just bring something out. You can't do that. I mean, I physically cannot do it.

Q. Have you no recollection of the progress of your discussions leading to your trip to the United States?

A. I can only recall it was discussed; that I offered to pay a visit, and that I arrived in America on the 24th of March.

Q. Was it by way of request to you, or was it at your suggestion, that the project was undertaken?

244 A. I offered to come to America; whether it was my suggestion or request, I do not recall.

Q. When did you offer to come to the United States?

A. Sometime this year.

Q. And to whom did you make the offer?

A. I don't remember.

Q. Did a meeting of the Directors take place; discuss the subject of your trip abroad?

A. Yes; and as the result I have a power of attorney which has been exhibited.

Q. And were you present at the meeting?

A. Yes.

Q. Will you tell us what was said? Will you tell us who was present; where and when it took place, and what was said by the respective directors or other persons in attendance?

A. I don't remember.

Q. Did you tell us earlier in your testimony that it was first contemplated that you hold the position of General Manager, and that later it was decided that you would be financial controller of the British Company?

A. The words "General Manager," as far as I recollect,
245 has never been mentioned in the evidence at all.

Q. I am sorry. Was there some other position or some other title in contemplation, prior to your becoming Financial Controller?

A. I do not recall such a title.

Q. When did you first become aware of the difficulties of the American company?

Mr. BLAIR. I object to the form of the question. Are you referring to the so-called impasse, or the financial difficulties.

Mr. CHERRY. Well, the financial difficulties—

Mr. BLAIR. As I know it, the question is not intelligible to me. I do not know how it seems to the witness, and I object to it.

Mr. PICKERING. I object to the question as assuming facts not in evidence.

Mr. CHERRY. I withdraw the question.

Q. Did you at one time become aware that the American company was in financial difficulties, and that there was some dissension among the directors?

A. I have already testified that I became aware of an impasse.

Q. How?

246 A. I can't remember that.

Q. Can you recall the occasion when the 100 "A" shares were issued to you?

A. No; but I believe it is in one of the exhibits. I believe the date is given in one of the exhibits.

Q. Perhaps the record will show that; but just as a matter of approximation now, as a point of departure, about when was it?

A. I should think it was in the end of 1942.

Q. Can you tell us the conversations leading to the arrangement in the issuing of those shares?

A. I can't remember that. It was very involved.

Q. Did it take place by oral conference, or was it partly oral and partly by written correspondence?

A. I can't answer that.

Q. Mr. Elcock, did you attend the meeting of the Directors of Scophony, Limited, at 49 Park Lane in London on the 21st of October 1941?

A. The evidence shows yes.

Mr. PICKERING. I move to strike out the answer on the ground that the exhibit is not in evidence, and upon the grounds urged against the exhibit itself. I assume counsel is referring to
247 Government's Exhibit for identification No. 1.

Mr. CHERRY. I have not referred to any exhibit.

Mr. PICKERING. Then I object to the question on the ground that it assumes facts not in evidence. There is nothing to show that there was such a meeting.

Mr. CHERRY. I will rephrase the question.

Q. Was there a meeting of the directors of Scophony, Limited, held in London on the 21st day of October 1941?

A. The evidence produced shows yes.

Mr. PICKERING. I move to strike out the answer as incompetent.

Q. Is it your testimony that there was such a meeting?

A. I can't remember.

Q. Well, I show you a document which has been marked "Government's Exhibit No. 1" for identification, and I ask you to read it and tell me whether it refreshes your recollection as to that occasion?

Mr. PICKERING. I object to any cross-examination of the witness based on Government's Exhibit No. 1 for identification, upon the ground urged against the exhibit when it was marked.

248 Mr. CHERRY. I am merely offering it to the witness not for any means or for any other purpose than to refresh his recollection.

A. I have read Exhibit 1 and I accept that there was a Director's Meeting.

Mr. FALLON. I move to strike out the answer as incompetent.

Mr. PICKERING. I join in the motion.

Q. Do you testify to your best recollection that there was such a meeting, Mr. Elcock?

A. Only from this evidence.

Q. Does it not refresh your recollection as to the fact?

A. As to the 21st of October 1941; no.

Q. Have you read the exhibit?

A. Yes.

Q. Did a meeting take place at which the subject matter of that exhibit was the proceedings?

Mr. PICKERING. Same objection.

A. I accept this exhibit as reporting a meeting that did take place, at which I was present.

Mr. FALLON. Same motion.

Mr. PICKERING. I join in the motion to strike out the answer.

249 Q. Were you present at that meeting?

A. I accept this evidence, and the answer is yes.

Mr. PICKERING. Same motion.

Mr. FALLON. Same motion.

Q. Does the exhibit refresh your recollection as to the holding of a meeting of the Directors of the Company at some time at which the subject matter of proceeding was that stated in the exhibit?

A. Yes.

Mr. PICKERING. Same objection.

Q. And you were present at that meeting, whenever it was held?

A. Well, you have asked me if I recollect the meeting; so I must have been.

Q. And refreshed by reference to that document if you were now asked to testify as to the proceeding actually held at that meeting, would your testimony be precisely what is related in that exhibit?

Mr. PICKERING. I object to the form of the question.

A. You will have to take it more slowly.

Mr. CHERRY. Will you repeat the question [addressing reporter]?

250 (Reporter repeats the question.)

A. On this evidence adduced; yes.

Mr. PICKERING. I move to strike out the answer on the ground previously urged.

Mr. CHERRY. I offer the exhibit in evidence.

Mr. PICKERING. I object to the exhibit on the ground urged when it was marked for identification.

(Government's Exhibit for identification No. 1 offered by defendant Scophony Corporation of America as Defendant's exhibit in evidence.)

The WITNESS. Can I add to my testimony on this exhibit? It is important. These minutes are not signed by anyone, and they may have been subsequently amended. They may be a draft of minutes, and they may not be on the books of the company.

Q. But so far as you recall, did those proceedings take place?

Mr. PICKERING. I object.

A. I accept that evidence as a general evidence of what took place at that meeting of that date.

Mr. PICKERING. I move to strike out the answer.

Q. Do you recall the resolution of the meeting of
251 October 21, 1941, just referred to, which concerns itself with the execution of a management agreement between the Company and yourself?

Mr. PICKERING. I object, and if it will expedite things, may I have a continuing objection on the record as to Government's Exhibit No. 1?

Mr. CHERRY. Do you ask me if it will expedite things?

Mr. PICKERING. Yes.

Mr. CHERRY. Surely.

Mr. PICKERING. Then I ask for such a continuing objection.

A. I do not recall.

Q. I ask you again to examine the last paragraph on the first page of Government's Exhibit No. 1 for identification.

A. Is there a question outstanding?

Q. No. I am just asking you to refresh your recollection by reading that.

A. Yes.

Q. Does the reference there to your becoming Manager jog
252 your memory so that you could tell us whether you now remember that it was once contemplated that you be Manager?

A. It was referred to in these minutes, yes; or it is referred to in these minutes; yes. I do not recall it.

Q. You do not recall ever being referred to as a prospective manager of the Company?

A. No.

Q. Do you recall that it was at one time contemplated that you would manage the Company's manufacturing activities in connection with defense contracts and subcontracts?

A. No; because it would be impracticable.

Q. Well, was it ever considered?

A. Not to my recollection.

Q. Will you tell us what your recollection is on that subject; on the subject of your functions?

A. I have testified already that it was in a question of general activities of the company embodying finance, acquisition of machinery, and the acceptance of orders.

Q. Will you tell us what you did in connection with the acceptance of orders?

A. I can't remember anything specific.

Q. Are you certain that there was anything specific?

A. I have no recollection.

253 Q. Will you examine, please, that portion of Government's Exhibit No. 2 for identification, under the heading "Special Business"?

Mr. PICKERING. I object to any cross-examination of the witness with respect to Government's Exhibit No. 2 for identification, upon the grounds urged when the exhibit was marked, and I request that I may have a continuing objection to any questions directed thereto, if it might be agreeable to counsel.

Mr. CHERRY. That you have a continuing objection?

Mr. PICKERING. Yes.

Mr. CHERRY. Surely.

The WITNESS. Yes, Mr. Cherry?

Q. I think you have already testified that you attended the meeting of the Board on the 15th of March?

A. This was a meeting of stockholders. I made that clear.

Q. I beg your pardon; stockholders on the 15th of March?

A. We called them shareholders, but it is on the testimony "stockholders."

254 Q. You attended the meeting?

A. Yes.

Q. On the 15th?

A. Yes.

Q. Did the business of the meeting include the passing of resolutions referred to under the heading of "Special Business"?

A. Yes; I have so testified; yes.

Q. And those resolutions which are recited were actually proposed and passed upon by the shareholders at that meeting in your presence?

A. Yes.

Q. And will you examine the remaining portion of that exhibit?

A. Yes.

Q. Do you know whether that is a true copy of the notices circulated to the shareholders of the Company on the eve of the meeting?

A. I would imagine so.

Mr. PICKERING. I move to strike the answer out.

Mr. CHERRY. I am afraid your imagination does not make evidence.

255 Mr. MARKER. The record shows that the document was produced by Mr. Elcock pursuant to subpoena duces tecum. He ought to know.

Q. Was this exhibit received by you as a shareholder of the Company, Mr. Elcock?

A. I received it from the Company; yes.

Q. The exhibit contains a reference to the deduction of Financial Controller's charges; do you recall that?

A. May I read it [looks at paper]? Yes.

Q. The Financial Controller there referred to is yourself, is it not?

A. Yes.

Q. And were the charges, the fees which were paid you pursuant to your agreement?

A. Yes.

Q. Were you, as a Director of the Company, asked to pass upon the Directors' report contained in this Exhibit No. 2?

A. I would be present at the Directors' meeting, when it was approved. I was present at the Directors' meeting when the report and accounts were approved for submission to the shareholders.

256 Q. Was the report and the statements of account approved by you identical with those which are set forth in this Exhibit No. 2?

A. Yes.

Mr. CHERRY. I offer Government's Exhibit No. 2 for identification in evidence.

(Government's Exhibit No. 2 for identification offered by the defendant (SCA) in evidence, as their exhibit.)

Mr. PICKERING. The same objection that was made to the exhibit when it was marked for identification.

Q. I direct your attention now to Government's Exhibit No. 3 for identification. Will you examine it?

A. Yes.

Q. Is that an accurate statement of the speech of Sir Bonham Carter, as Chairman of the British Company?

Mr. FALLON. I object.

Mr. PICKERING. And in addition, I object as calling for an opinion, a conclusion, assuming facts not in evidence.

Mr. FALLON. I join in the objection.

A. I accept Exhibit No. 3 as a copy of the Chairman's speech.

257 Mr. PICKERING. I move to strike out the answer as incompetent.

Q. Were you present at the delivery of the Chairman's speech?

A. I have testified that it was accepted as read, having previously been circulated.

Q. Was it circulated in the form, omitting the interlineations, in the form as set forth in Government's Exhibit No. 3 for identification?

A. It certainly was not underlined.

Q. I have asked you to consider those omitted.

A. There was nothing underlined.

Q. Omitting the underlining, was the Chairman's speech circulated in the form you have before you in Government's Exhibit No. 3 for identification?

A. I am prepared to accept this as a copy of the Chairman's speech; yes.

Mr. PICKERING. I move to strike out the answer as incompetent.

Q. Will you answer that question by a yes or no?

A. Will you repeat the question?

(The reporter reads the last question.)

A. I can't recollect.

258 Q. So far as you do recollect, what is your best recollection?

A. That the speech was in a form like this.

Q. Is that your best recollection?

A. Yes.

Q. And are you acquainted with the subject matter of the Chairman's speech?

A. I have read the Chairman's speech before it was circulated; yes.

Q. Have you seen it in the form in which it was adopted as it read?

A. Yes.

Q. And so far as you recall, that form was identical, except for the interlineations; with that set forth in the exhibit?

A. As far as I can recollect.

Mr. CHERRY. I offer in evidence Exhibit No. 3, Government's Exhibit No. 3.

(Government's Exhibit No. 3 for identification offered in evidence by defendant SCA as their exhibit.)

Mr. PICKERING. I object to Government's Exhibit 3 for identification upon the ground urged against it when it was marked for identification; and on the further ground that it is incom-

259. petent; not properly authenticated; and not binding upon the defendants whom I represent.

Mr. FALLON. Let the record show that since the beginning of this hearing I join in objections for my client which are made by Mr. Pickering on behalf of his, unless otherwise stated. It saves time and it saves constant interruptions.

Q. Will you refer now, please, Mr. Elcock, to Government's Exhibit No. 5 for identification?

A. Yes.

Q. Was a cablegram sent by you to Mr. Boothby as of the date which that exhibit bears, setting forth the contents of that exhibit, except for the interlineations?

Mr. PICKERING. I object to any examination of the witness with respect to Government's Exhibit No. 5 for identification, upon the grounds urged against the exhibit when it was marked; and I object to this particular question, which is incompetent; and not the best evidence.

Mr. CHERRY. Will you repeat the question, please, Mr. Reporter?

(The reporter reads the last question.)

260 A. I accept that exhibit as refreshing my memory.

Mr. PICKERING. I move to strike out the answer as incompetent.

Q. Is the exhibit a true copy of one sent by you, leaving aside the interlineations?

A. I recall sending a telegram to Boothby on this matter; but I cannot say that this specifically was the wording. I accept this.

Q. You are willing to testify that this is a copy of the cable sent by you?

A. As far as I recollect.

Q. To the best of your recollection?

A. Yes.

Mr. CHERRY. I offer in evidence this exhibit.

(Government's Exhibit No. 5 for identification offered by defendant SCA in evidence, as their exhibit.)

Mr. PICKERING. I object to the offer of Government's Exhibit 5 for identification upon the grounds urged against the exhibit when it was marked; upon the ground that it is immaterial and incompetent; not properly authenticated; and not binding upon the defendants whom I represent.

261 Q. Do you now recall the occasion in 1945 when you sent the cable to Mr. Boothby?

A. No; I can only recall cabling him out here.

Q. Does a reading of the exhibit itself recall to your mind your information as to the situation in the United States at that time?

A. No.

Mr. PICKERING. May I have a continuing objection to any reference to Government's Exhibit No. 5 in the examination of the witness, upon the grounds urged against the document when it was marked.

The WITNESS. May I have the question repeated?
(Reporter reads the last question.)

A. No.

Q. Were you instructed by the Directors of the British Company to send the cable to Mr. Boothby?

A. I have no recollection.

Q. Did you send the cable on your own authority?

A. I have no recollection.

Q. Did you discuss sending the cable with anybody else concerned with the affairs of the British Company?

A. I can't recall it.

Q. Can you tell us why you were concerned to write your cable to Mr. Boothby about the affairs of the American Company?

262 A. I can't remember.

Q. Did Mr. Boothby make a report to you or respond in any way to your cable?

A. I have testified that I do not recollect what happened.

Q. Do you remember on reading the concluding lines of the cable, which are, "Maurice Bonham Carter, Chairman, of British Scophony Company, backs this request wholeheartedly," that you had discussed it with Bonham-Carter at the time?

A. I can't remember.

Q. Were you consulted on the formulation of the agreements which are attached as exhibits to the Government's complaint?

A. Can I have something more specific? That is the agreement with SCA?

Q. The agreement with SCA and with the American companies, the other defendants?

A. I can't remember; but I have testified that they were settled by American counsel.

Q. You signed the agreements in which the British Company participated as holder of the charge, did you not?

A. Yes.

263 Q. And were you not consulted at the time as to the contents of the agreements?

A. I can't remember.

Q. Did you read them?

A. I can't remember at the present date.

Q. Can you remember that you ever read them?

A. I can't remember. At this stage England was at war and war conditions were existent.

Q. Is it probable that you signed them without reading them?

Mr. BLAIR. I object to the form of the question.

A. Do I now answer?

Mr. CHERRY. You take your instructions from Mr. Blair.

Mr. BLAIR. I do not think that is a proper question to ask. That does not elicit anything. You can ask him what his recollection is; whether he did.

Mr. CHERRY. This is cross-examination.

A. They were signed. The evidence shows that they were signed by my power of attorney. So I cannot recall whether I saw them before that.

Q. Do you know their contents today in general?

A. I have read them.

264 Q. As of what earlier time?

A. I read them coming over on the boat; but when I read them before, that I can't remember.

Q. Do you remember that you in fact did read them before coming over at any time?

A. I can't remember.

Q. You were certainly concerned with the controversy in the United States, weren't you, in the affairs of the Company, the American Company?

A. As a Director.

Mr. PICKERING. I object to it as assuming facts not in evidence; and being indefinite as to time.

Q. You say you were concerned, as Director, with the affairs of the American Company?

A. As a Director I would be concerned with all the affairs of the English Company.

Q. Did that not include familiarity with the contract which the British Company entered into?

A. Yes.

Q. Would it be your testimony that you were in fact
265 made acquainted with the contents of the agreement in which the British Company participated at or about the time of their execution?

A. I can't remember.

Q. Were not the agreements which are attached to the Government's complaint, and to which the British Company and yourself were signatories, later ratified by both the Board of Directors of the British Company and yourself as mortgagee?

A. I can't remember.

Q. At the time that you cabled Mr. Boothby as to the controversy in the United States, as appears from Government No. 5

for identification, did you as Director make yourself familiar with the basic documents by which the rights of the parties would be determined?

A. I can't remember.

Q. I refer you now to that portion of the Directors' report, so-called, appearing in Government's Exhibit No. 9 for identification, which reads: "Mr. W. G. Elcock requires to be re-elected pursuant to the provisions of Article 94," and in order to construe the meaning of the word "requires," I ask you whether you in fact imposed that requirement in any way yourself?

266 Mr. PICKERING. I object to any examination of the witness with respect to Government's Exhibit No. 9 for identification, upon the ground urged against it at the time it had been marked, and I would like to make a continuing objection to any further reference thereto, to save time.

Mr. CHERRY. Will you repeat the question, Mr. Reporter?
(The reporter reads the last question.)

A. You refer to an exhibit and you asked me a question, and I ask you to repeat it.

(Question read.)

A. I did not impose Article 94.

Q. What I am after there is whether you personally did the requiring by some act, or whether it was legally that Article 94 called for it?

A. As far as I can recollect, it is under the Articles of Association of the Company. It was done because of the drafting of the Articles of Association.

Q. I read to you from Government's Exhibit No. 14 for identification, the fourth paragraph, as follows: "As you are aware, Mr. Hines of G. P. E., has recently paid a visit to this country, and my colleague, Mr. Elcock, and I have had several

267 meetings with him, and also our General Manager, Mr. Wikkenhauser. As a result we have established very friendly relations with him, and it has become clear that on many sides of our business our interests are alike, and in particular, in the field of high class instrument product and which we have both developed as a result of the war."

Did you subscribe to the views expressed in that paragraph?

Mr. PICKERING. I object to any interrogation of the witness with respect to Government's Exhibit No. 14 for identification, upon the grounds urged at the time that it was marked; and I make a continuing objection to any reference thereto in the examination of the witness.

A. I have testified that I only met Mr. Hines once.

Q. Well, isn't it true that as a result of the meeting or meetings with him there was established between the British Company and him friendly relations?

A. May I read that letter? You are asking me to express the view of the English Company?

Q. Yes; does that express the view of the English Company?

A. I can't answer that; it is purely a personal letter and not a Company letter; a letter from Sir Bonham Carter to someone not connected with the Company.

Q. Does it express your view as to the result of Mr. Hines' visit?

A. I have already testified that Mr. Hines and I got on very well together; nothing else; I cannot go beyond that, and I do not go beyond that.

Q. Were you at any time familiar with the identify of the interests of the British Company and Mr. Hines?

MR. FALLON. I object to the form of the question.

MR. PICKERING. And on the further ground that it is assuming facts not in evidence.

THE WITNESS. Will you repeat the question?

(Reporter reads last question.)

A. I can't recollect.

Q. Does it refresh your recollection at all when I read the second sentence of that paragraph, "As a result, we have established very friendly relations with him, and it has become clear that on many sides of our business our interests are alike"?

A. That is not a Company letter. I do not know whom Bonham Carter means by "we". It might be himself, and Wikkenhauser. He might bring me into it. It may be some other man in the Company. In my opinion it is not clear. I cannot express an opinion on Bonham Carter's letter.

Q. I am not asking you for an opinion on the letter; I am asking you whether that truly states the relationship between the British Company and Mr. Hines.

A. I can't express any.

Q. Do you know that is being referred to in that portion of it which reads, quoting again, "and in particular in the field of high-class instrument product?"

A. No.

Q. At the discussion of Mr. Hines which you attended in London was the nature of the production of the British Company and of Mr. Hines' company discussed?

A. Not as far as I can remember.

Q. Did you ever at any later time have a discussion with Mr. Bonham Carter on this subject?

A. I do not recall any.

Q. At a meeting of the shareholders of Scophony, Limited, on March 15th last, there was presented for approval by the shareholders a resolution permitting the issue of 10% of any new shares authorized to be issued to the holder of the 100 "A" shares; was there not?

A. Yes.

270 Q. Did the right to such additional shares obtain prior to the proposal at the meeting?

Mr. BLAIR. I object to that question, and you are trying to get this witness to testify as a matter of law that there either was or was not any such right.

Mr. CHERRY. I will withdraw the question.

Q. Was the right to such additional shares in respect of any agreement prior to such meeting on March 15th?

A. Was the right to any such additional shares?

Q. Yes.

A. I held an option agreement, the terms of which I can't tell you now without the documents in front of me.

Q. And you do not know whether the option agreement gave you the right as the holder of 100 "A" shares to 10% of any new issue?

A. As far as I recall, it did. Can I just add to that, upon terms? I think it clears it if I say "on terms."

Q. But there was a pledge?

A. There is an option agreement; but I can't quote the terms. It is very complicated.

Q. Are the books and records, correspondence and
271 agreements of Scophony, Limited, available to you for inspection and copying?

A. That is a legal point I cannot answer. I should say, no. It seems to me that's a very technical legal point. I mean, you said "inspection." You have had three things. The word "inspection," yes. But you said, "copying," which is something else.

Q. You certainly have the right to inspect the records of the company of which you are a director?

A. Yes. But you said beyond that. If you would like to break it up, I will do it, Mr. Cherry.

Q. Is there a right to inspect? You grant that you have that?

A. Yes.

Q. The right to copy, as to that?

A. I should think definitely, no. But this is purely a legal point, and I say I am only a chartered accountant, not a counsel.

Mr. CHERRY. Subject to resumption on the conclusion of the examination by counsel for the other defendants, I temporarily rest.

(Adjourned at 12:30 and resumed at 1:30 p. m.)

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AFTERNOON SESSION—1:30 O'CLOCK P. M.

WILLIAM GEORGE ELCOCK resumed the stand and testified as follows:

Cross-examination by Mr. PICKERING:

Q. Mr. Elcock, how long have you been engaged in business in England?

A. 23 years.

Q. I understood you to say that you were interested in some 80-odd companies; is that correct?

A. Yes.

Q. Is your interest in those companies in relationship to the size and activities; are they substantial interests in each?

A. Yes, sir?

Q. Do you devote some part of your time to the business of all of these different companies?

A. Yes.

Q. Is it a fact that you have in your office some 15 trunk lines?

A. I have a telephone board of about 15 lines.

Q. I take it, then, that you are a pretty busy man?

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A. Yes.

Q. And that in the conduct of your business you devote little, if any, time to the details of any of these companies in which you are interested?

A. Little.

Mr. MARKER. I object to the form of the question. It is not calling for a factual answer.

Mr. CHERRY. Will you read the question, please?

(Reporter reads the question.)

Q. In giving your testimony, you make a distinction between a period when you had no knowledge of the affairs of Scophony, Limited, and a later period when you did have some knowledge. Can you give us approximately the dividing line between those periods in the matter of a date?

A. No; I cannot.

Q. At the time you became a director of Scophony, Limited, and following that time, you had some knowledge of the affairs of the Company, did you not?

A. Of Scophony, Limited?

Q. Yes.

A. Yes.

Q. And at the time the three contracts which are annexed to the complaint were entered into, you had some knowledge of its affairs?

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A. Of the affairs of Scophony; yes.

Q. During that period was Scophony, Limited, engaged in the manufacture of any television apparatus employing the supersonic system?

A. In the time I have been connected with the Company, it has not been permitted to manufacture any television equipment. May I add to give the reason? Because of the war.

Q. Employing either the supersonic system or the so-called skiatron system?

A. I think if they don't manufacture, they don't use any system.

Q. Have the Scophony patents relating to the supersonic television system been developed to a point where any merchantable receiving set can now be constructed?

Mr. MARKER. I object to that question. I would like to know what part of the direct brought out that matter to entitle you to ask it on cross.

Mr. PICKERING. There are generally a number of exhibits offered by the Government, the purpose of which has not been disclosed; and in response to inquiry as to one of them, the
275 Government declined to state what its purpose is. I have no idea what arguments may be based on these exhibits, if and when they are accepted; and all I can do is to cross-examine now as to such inferences or implications as the Government may be disposed later on to draw from these exhibits.

Mr. MARKER. I object, and I will not permit the examination for the purposes and the inferences of what the Government may go into; and the cross must be on the basis of actual testimony. And I will not permit an answer to that question without a court ruling. I do not know of any place in the direct; dealing with the subject matter you are now directing you to on cross.

Mr. PICKERING. Does the Government intend to offer in evidence Government's Exhibit No. 3 for identification?

Mr. MARKER. I do not know at this time; and this document has not been used for any purpose or information to which you are now directing yourself, and if it so relates to the subject matter to which you are now addressing yourself, I do not believe it entitles to cross, merely because the document was
276 offered for identification. And questions were asked in connection with it in certain particular specific matters; and that is the only use made of it up until this time; and I will not permit you to go beyond that in your cross-examination; without a court order.

Mr. PICKERING. Does the Government intend to offer in evidence at the trial Government's Exhibit No. 5 for identification?

Mr. MARKER. We may or may not. We cannot answer at this time. Again, even if we did so, I do not see how it would permit counsel to cross-examine on the subject matter that he is now addressing himself to.

Mr. PICKERING. What do you understand that subject matter to be, Counsel?

Mr. MARKER. The subject matter of that telegram, as I understand it.

Mr. PICKERING. No. I mean that I am addressing myself to.

Mr. MARKER. I ask you, what is the subject matter of your question?

277 Mr. PICKERING (addressing the reporter). Will you read the question, Mr. Reporter?

(The reporter reads the following question: "Have the Scophony patents relating to the supersonic television system been developed to a point where any merchantable receiving set can now be constructed"?)

Mr. MARKER. As I understand it, you are asking the witness for his opinion as to the quality of Scophony television, and to my knowledge the direct examination has not concerned itself in any measure with the witness' information about the quality of Scophony television. That is one of the objections.

Secondly, I object on the ground that the witness has drawn no testimony here to qualify him to pass an opinion here on any television system.

Mr. PICKERING. I ask the witness to answer the question.

Mr. MARKER. I object, and I ask for a court ruling before I will permit it to be answered. I do not think it is proper cross-examination.

(Discussion off the record.)

Mr. MARKER. If I understand you correctly, we reserve the answer now, as you did previously.

278 Mr. BLAIR. Mr. Elcock wants to have it now on the record that he is not to answer that question in deference to Government's counsel.

Mr. PICKERING. May I say this for the record: That if I were in the position of Government's counsel, I would appreciate it if when anyone insisted that the witness do not answer, that the witness not answer.

Q. Is the Scophony, Limited, now manufacturing any supersonic television receiving sets?

Mr. MARKER. Again, it seems to me. Mr. Pickering, you are going into new matter. If you can show me, of course, where this matter was treated with on direct, you may cross-examine. I do not recall asking questions as to present activities, manufac-

turing activities of Scophony, Limited; of Scophony, Limited, or of its future activities.

Mr. PICKERING. You have a number of exhibits here which refer to them; and of course I am entirely unaware of what effect you are going to claim for these exhibits on the trial, if you are able to substantiate them and have them admitted in evidence; and this will be my only opportunity to cross-examine.

279 (At this point, James C. Wilson, Chief of the New York Office of the Anti-Trust Division, Department of Justice, joined the Counsel table with Mr. Marker.)

Mr. PICKERING. I would like to add in support of my position that on direct examination Government counsel did inquire as to a production of Scophony, Ltd. The witness testified that during his connection there it had been confined to war products, and I think I am entitled to inquire whether that included the products about which I expect to interrogate the witness.

Mr. MARKER. Mr. Pickering, kindly show me in the record where I asked the question as to production engaged in by Scophony, Ltd. Insofar as that came out, I think that was information volunteered by the witness in support of the explanation of his answer.

Mr. PICKERING. It is your witness and you did not move to strike it out as not responsive and you have it in the record if you want to use it.

280 Mr. MARKER. It was not in any connection as to any question of mine. But as to the production of Scophony, Ltd., to my recollection, the only place there was any connection of the production of Scophony, Ltd., was an explanation of some matters therein related and he merely remarked a statement that Scophony, Ltd., was engaged in war products and he did not state the amount or anything else; and the fact that he was so engaged in war products, you can ask him if he was engaged, or anything else about it; but the amount and the details thereof, what it consisted of, I do not think that is a part that you can cross-examine on.

(Discussion off the record.)

Mr. PICKERING. Will you read the question, Mr. Reporter?

The WITNESS. Repeat the question.

(The question was read by the reporter, as follows: "Have the Scophony patents relating to the supersonic television system been developed to a point where any merchantable receiving sets can now be constructed.")

281 Mr. MARKER. I object to that question upon the ground that it is improper cross-examination because it goes into new matter not treated on direct, and therefore, it is highly improper. Secondly, I object on the ground that the question calls

for the rendering of an opinion and the witness has not been qualified as a proper party to express any opinion on the quality of television, and any receiving apparatus. Third, I object to the form of the question, the use of the word "merchantable," as to meaning and contents.

Mr. CHERRY. I join in the objection insofar as it is grounded on the lack of meaning in it; and, further, as to its calling for an opinion.

The WITNESS. May I have the question again?

(The reporter reads the question again.)

A. I can't answer that, as the company is still under Government restrictions on production.

Q. Is Scophony, Ltd., still engaged in Government work?

A. Yes.

Mr. PICKERING (addressing reporter). Will you read that next question?

282 (The reporter reads the following question: "Is Scophony, Ltd., now manufacturing any supersonic television receiving sets?")

The WITNESS. I am not in a position to answer that. I do not know the position. I can't answer that.

Q. Has Scophony, Ltd., during the time that you have had knowledge of its business sold any television receiving sets involving its supersonic patents?

A. Read that again.

(The reporter reread the question.)

A. Not between the period of 1941, late 1941 until I left for America.

Q. All of my questions, Mr. Elcock, will relate to the period as to which you have some knowledge of the company's affairs and not prior thereto.

Mr. MARKER. Would you fix the date on that more approximately, please?

A. At this time?

Mr. PICKERING. It relates to the time since he became a director.

Mr. MARKER. Which is approximately in 1943.

A. Yes; when I became a director.

283 Q. Does your knowledge of the affairs of the company go back earlier to that date, Mr. Elcock?

A. No.

Q. During that period has Scophony, Ltd., exported any television apparatus to the United States?

A. Wartime conditions would not permit.

Q. You have testified that you were at one time connected with the Odeon Theater in London?

A. Odeon Theaters, Ltd.; yes.

Q. During that time was there a demonstration of a Scophony Supersonic Television receiving set made at the Odeon Theater?

A. Yes; Odeon Theater, Leicester Square.

Q. Did you witness it? Did you see it?

A. I do not remember whether I saw it there. I have seen Scophony Television in or about that year.

Mr. MARKER. At this point, just as a clarification, because it is not clear in my mind if something was stated off the record or on the record, that is, if counsel will agree, the Government takes a continuing objection to this line of questions directed to the characteristics, qualify, or any other way touching on the ability of the Scophony systems to televize, that is, the subject matters indicated by the prior lines of questions, as being beyond the scope of the direct examination. Is it all right if I have a continuing objection to that effect?

Mr. PICKERING. Certainly.

Mr. MARKER. You understand that also purports to the earlier questions?

Mr. PICKERING. That is right.

Q. Did Odeon Theaters, Ltd. purchase a set that was used for demonstration?

A. I think I have already testified to that effect.

Q. And it has resold the set, did it not, to Scophony, Ltd?

A. I believe it resold it. To my recollection; yes.

Q. For how long a period was the demonstration carried on at the Odeon Theater?

A. I can't recall; I do not recall.

Q. You testified that you had seen a Scophony television set, whether at that theater or another you were not sure. Did you refer to the Monsignor Theater in London?

I can't remember.

Q. To your knowledge, did Scophony, Ltd., sell any other receiving set other than the one it sold Odeon?

A. I don't know anything about whether Scophony sold other sets.

Q. How many television broadcasting stations are there in England?

A. Now, or were there?

Q. Well, how many were there from 1941 down to date?

A. They were closed down at the beginning of the war. Whatever they were, everything was shut down.

Q. But prior to that, was there more than one television broadcast station?

Mr. MARKER. Prior to 1941.

Q. Prior to the commencement of the war?

A. I don't recall more than one.

Q. And that was Government-operated?

A. Whatever stations there were were Government operated.

Q. Do you know what the effective range of that station was?

A. I can't remember at this date.

286 Q. Was the demonstration of the Scophony television set which you saw of the quality which made it of practical use in public entertainment?

Mr. MARKER: In addition to the grounds of my continuing objection, I object on the ground that the question asks for a statement of opinion. It is unclear and indefinite as to what is meant by the quality; and the witness has not been qualified as a television expert or any party capable of passing an opinion on television quality of any television sets.

Mr. PICKERING. The witness was a theater operator.

Mr. MARKER. I doubt very much that a court of law would permit a theater operator to give expert testimony as to television quality.

The WITNESS. It is too far ago for me to express my views.

Mr. CHERRY. May I hear the answer?

The WITNESS. It was too long ago for me to express my views.

Q. You testified that Mr. Levey was one of the persons with whom you talked since you have been in New York on this
287 business. How many conversations did you have with Mr. Levey?

A. I had seen him twice apart from when we met here again.

Mr. FALLON. I move to strike out the answer on the ground of my continuing objection as to any conversation subsequent to the commencing of the suit.

Q. Do you recall when those conversations were?

A. I have no diary, they were about five days, I think, after I had landed; and I believe I met him the following day. Mr. Levey, who keeps good records, will be able to help you.

Q. Were those conversations on successive days?

A. I do not recall now.

Q. Following those conversations, did you request Mr. Levey to prepare a memorandum of the discussion signed by both of you?

A. Yes.

Mr. CHERRY. I object to that on the ground it is irrelevant and move that the answer be stricken.

Q. Did he agree to do so?

A. Yes.

Q. Has he done so?

288 A. Pardon?

Q. Has he done so?

A. No. He told me that on Mr. Cherry's advice he should not hand me an agreed note of the meeting.

Q. You had no discussion with him since that day?

A. Since the second meeting? I met him after that and as I had not had a copy of the note of the original meeting, I told him I was not prepared to carry on any more discussions.

Mr. FALLON. To preserve my position on the record, let it be understood that my objection, of course, continues on this entire line.

Q. Is Mr. Levey any longer a director of Scophony, Ltd.?

A. Since the 15th of March 1946; no.

Q. You know, do you not, that a gentleman by the name of Franklin Field was at one time a director of SCA?

A. I have not any specific recollection, except what I have been reminded in the course of this testimony.

Q. And Mr. Joseph E. Swan?

A. Yes; the same thing applies.

289 Q. They were not reelected at the stockholders' meeting of last year held in July 1945, were they?

A. I have not any recollection or record of that.

Q. You know that they are not now directors?

A. Yes.

Q. Do you know that a gentleman by the name of Dan Levy is now a director of SCA?

Mr. MARKER. I object to those last questions on the ground that they are completely immaterial and incompetent.

Mr. PICKERING. You may answer.

A. Yes.

Q. And also a Mr. William Levy?

A. I don't remember the name William. There are three Mr. Levy's directors now. I know the name Dan. I do not recall the name William.

Q. One of the three is Mr. Arthur Levey?

A. Mr. Arthur Levey; and the other two Levy's are directors.

Q. You also know, do you not, that after the election of the other two Levys, Mr. Hines and Mr. Raibourn resigned from the Board of the SCA?

290 Mr. CHERRY. I object to that as incompetent. This witness's knowledge of the fact, if he has any, is hardly the best evidence of it, and I object to his answering, subject to a ruling of the Court.

Mr. MARKER. I object to the form of that question. You have made your point in your answer, that you sort of linked together two matters, and you in your question made a connection between

two events which may or may not have happened, and linked them together in a casual relationship which has not been shown and not been demonstrated and I object to the form of that question.

Q. You know, do you not, that neither Mr. —

A. My answer to the last question was not complete. I started to say something.

Q. Will you complete it?

Mr. CHERRY. I think we will have to take up with the Court any further answer to that question.

The WITNESS. I was going to say, I don't know why they resigned, which is quite simple.

Q. You do know, however, that neither Mr. Hines nor Mr. Raibourn are now members of the Board of SCA?

A. To that I have already testified.

291 Q. Is that what you referred to the other day when you stated that one element of impasse was that there were no longer any directors elected by the B holders on that Board?

A. Yes.

Q. In what manner did the lack of representatives of the B stockholders as directors on that Board contribute to the impasse to which you referred?

Mr. CHERRY. Just a minute. I object and I ask for a ruling on my objection, that the question is incompetent, irrelevant, and not the best evidence; calls for an opinion.

Mr. MARKER. Will you repeat the question?

(The reporter read the last question.)

Mr. MARKER. I object to the form of the question and on the ground that it asks for an opinion.

The WITNESS. It is too general for me to answer.

Q. Mr. Elcock, you have been examined with respect to the three contracts which are annexed to the complaint as exhibits. At the time these contracts were entered into, was it to your knowledge, the purpose of Scophony, Ltd., to make provision for the introduction of its television products into the United States?

292 Mr. CHERRY. The purpose is certainly incompetent and irrelevant, and it not being the witness's own purpose, would be a mental operation and, therefore, not competent, and I object to it as being irrelevant; and if you press the question, I will request that the court rule.

Mr. MARKER. I join in the objection on the basis of incompetency.

Mr. CHERRY. I would like to amplify the objection. The documents speak for themselves and Mr. Elcock's opinion would not be binding upon my clients.

Q. You authorized the execution of two of these contracts by your attorney-in-fact, Mr. Arthur Levey, did you not?

A. I authorized Mr. Levey to sign on my behalf as mortgagee of agreements prepared by American counsel.

Q. And was it your purpose in authorizing the execution of that agreement to lay the foundation for the introduction of television products under the Scophony patents in the United States?

Mr. CHERRY. The same objection. The witness's purpose is incompetent. His testimony as to purpose is incompetent, and not binding upon my client.

Mr. PICKERING. You may answer.

Mr. CHERRY. Just a minute; and it calls for a mental operation, and I want a ruling on it.

Mr. PICKERING. It calls for his own mental operation.

Mr. CHERRY. That is right. That is why I object to it.

Q. You stated this morning that you read these contracts?

Yes.

Q. You know, do you not, that they provide for the organization of the SCA?

A. The agreements speak for themselves and I am a person—being only an accountant, that if I wished to know anything about a document I carry it about me and refresh my recollection to it. I do not carry things in my head.

Q. You understand, do you not, that SCA was organized pursuant to those agreements?

Mr. CHERRY. I object to it as incompetent.

294 Mr. MARKER. I object on the ground that the documents speak for themselves.

Q. You know, do you not, that SCA was organized?

A. Yes.

Q. And that Limited has a stock interest in it?

A. Yes.

Q. And that certain United States, Canadian, and Argentine patents under the Scophony inventions were assigned to SCA?

Mr. CHERRY. I object on the ground that the documents speak for themselves.

Mr. PICKERING. I am only asking whether they were assigned.

A. Certain patents, the description of which I cannot give you, were assigned.

Q. You know, do you not, that they related to television in a large part?

Mr. CHERRY. I object to that on the ground that the documents will show and the witness's testimony will be secondary and certainly not competent.

Mr. PICKERING. May he answer?

Mr. CHERRY. No. I reserve that for the Court.

295 Q. In coming to the United States in connection with the impasse which you stated existed in the affairs of SCA, was it your purpose to resolve that impasse in order to enable SCA to continue to operate?

Mr. CHERRY. Objected to on the ground that purposes and statements of mental operations are incompetent and irrelevant, not binding upon my clients. I would like to reserve that for the Court.

Mr. FALLON. My continuing objections as to transactions and conversations subsequent to the institution of the suit.

Q. Did you have any purpose in coming to the United States and dealing with that impasse to make it impossible for SCA to exploit the patents which have been assigned to it?

Mr. CHERRY. Objected to on the same grounds. And may I say, Mr. Pickering, that you grounded several objections on the ground that they related to matter subsequent to the initiation of the action and yet you have explored widely in that time-period category. I think, counsel, you are not consistent.

296 Mr. PICKERING. These questions are not in that category. There is a charge in the complaint of conspiracy and combination to suppress Scophony patents in the United States and I think I am entitled to find out from this witness whether it is any purpose of this witness as a director of Scophony, Ltd., to suppress those patents and prevent their being exploited in this country, as charged in the complaint.

Mr. MARKER. I object to the question on the ground that the direct examination did not go into the question of suppression, and the cross-examination is not entitled to go into that; and I continue my objection to matters of that nature.

Mr. CHERRY. It calls for a mental operation and I object to it.

Mr. PICKERING. I am willing to have it all go out.

Mr. CHERRY. The objection stands. We can get a ruling on it.

Q. Did you approve of the election of the two Levys other than Mr. Levey, Arthur Levey, to the Board of SCA?

297 Mr. CHERRY. Objected to on the ground that that is wholly irrelevant and incompetent and not binding upon my clients. I really don't see and I would like to understand how you hope to introduce evidence of that sort into a record here.

Mr. MARKER. I join in the objection on the ground of immateriality.

Mr. PICKERING. We won't get any ruling from the Court on immateriality now.

Mr. MARKER. I reserve my objection for a later date.

Q. You testified, Mr. Elcock, that you did not know that the B stockholders had made a loan to SCA, did you not?

A. Did I use the word "recollect" or "did not know"?

Mr. PICKERING. I am not certain.

A. I have no recollection.

Q. You have been advised, however, were you not, that such a loan was made?

A. A loan was made; but as to the terms, I don't know. If you asked me, I couldn't tell you.

298 Q. Merely the fact of the loan is all I am interested in.

A. All the discussions were wrapped in the question of a general settlement which embraced a settlement of the antitrust suit which I came over here to deal with.

Mr. MARKER. I object to any explanation beyond the answer to the question and I move that it be stricken.

Mr. PICKERING. I consent that it be stricken.

Mr. MARKER. You consent?

Mr. BLAIR. You better leave it on. You want it physically taken out!

Mr. MARKER. Read the question.

(The reporter read the question.)

Mr. PICKERING. If that is the fact, I am willing that the question and the answer be stricken out.

Mr. MARKER. As far as I am concerned, you can leave the answer in.

Mr. PICKERING. That is all I have.

(Discussion off the record.)

Mr. FALLON. I move to strike out the last part of the witness' answer given previously in reply to the question "Do you recall when those conversations were?" to wit, "Mr. Levey, who keeps good records, will be able to help you," on the ground that it is not binding on my clients and on the grounds that it is unresponsive, volunteered and incompetent.

Mr. PICKERING. I also move to strike it out.

299 Mr. CHERRY. Let the record show when the motion was made.

The WITNESS. I did not think that was going on the record. That is a facetious remark.

Mr. MARKER. Mr. Fallon, do you wish to proceed with your cross, if you have any cross?

Mr. FALLON. I have no questions.

Mr. BLAIR. I would like to ask the witness a question or two to clarify this.

Cross-examination by Mr. BLAIR:

Q. As a matter of fact, do you know whether Mr. Levey keeps good records?

A. I have no personal note of that.

Q. When you made the statement which has been referred to, that he did keep good records, what did you mean?

Mr. CHERRY. I object to that. The witness is not permitted to state the meaning. It is incompetent.

Q. Would you explain that statement, Mr. Elcock?

Mr. CHERRY. I object to an explanation. I think the words are perfectly clear.

300 Mr. BLAIR. I think the witness has said that the remark was facetious.

The WITNESS. The reason I asked—

Mr. CHERRY. Just a minute, Mr. Elcock. If you want a ruling on your question, let us have it; but that objection stands.

Q. As I understand your testimony, you do not know whether or not Mr. Arthur Levey keeps good records?

Mr. CHERRY. I object to a restatement of the witness's meaning in terms which counsel may seek to put.

Mr. BLAIR. I asked him whether or not he knew that Mr. Levey kept good records.

The WITNESS. I have no personal knowledge.

Mr. CHERRY. I ask that that be stricken, and I ask that the witness please be instructed not to answer.

Mr. BLAIR. He testified to that before.

Mr. CHERRY. Whatever he testified to, let it be; but further questioning is subject to further ruling.

Mr. FALLON. Don't answer if Mr. Cherry objects.

301 Cross-examination by Mr. FALLON:

Q. Have you ever seen any of Mr. Levey's records?

Mr. CHERRY. No objection.

A. No.

Mr. FALLON. That is all. I want the record to show that my objection to the witness's testimony concerning Mr. Levey's records, the statement that he volunteered, was not objected to at the time by me because I did not understand it to have been made on the record.

Redirect examination by Mr. MARKER:

Q. Mr. Elcock, is there any official of Scophony, Ltd., who is referred to by the name, "Richard"?

A. I do not recall anyone.

Q. Are you ever referred to as "Richard"?

A. No; I am just a William George. Let me think. No; I do not think so. It does not strike a chord.

Q. Mr. Elcock, did Odeon Theater, Inc., buy or demonstrate one or two Scophony, Ltd., television sets?

A. I have no recollection.

302 Q. Do you recall whether Scophony, Ltd., television was shown in one London theater or in two London theaters?

A. I only remember an installation going into Leicester Square.

Mr. PICKERING. That is Odeon?

The WITNESS. Yes; Odeon, Leicester Square.

Q. Is it the Monsignor Theater or some such name?

A. Yes; that is the right name.

Q. Is that an Odeon Theater?

A. No.

Q. Do you recall whether Scophony Television was ever shown in the Monsignor Theater in London?

A. I would have no knowledge.

Q. Do you recall how long the television showings were made in the Odeon Theater?

A. No; I was not on the demonstration. I was not on the showman's side.

Q. You have some recollection; one month, nine months?

A. It would not be fair to answer. I cannot recall it.

Q. Do you know, what efforts terminated television demonstrations in the Odeon Theater?

303 A. The outbreak of war.

Q. Do you know that that was the only reason that it was discontinued?

Mr. PICKERING. I object to that as not proper redirect examination; leading and suggestive.

A. I do not recall any other.

Q. The Scophony television set in Odeon was sold to the Odeon Theaters; is that correct?

A. That is as I understand it.

Q. It was an outright sale; is that right?

A. I can't recall any details.

Q. Do you know whether or not there was any provision for a return of the equipment?

A. I have no knowledge about that.

Q. Do you know whether the television set purchased by Odeon was an experimental model or a commercial model?

A. I could not answer that. I only know that they had a model with which they gave shows; but I could not say.

Q. Will you examine this document and tell me if it refreshes your recollection whether or not the equipment sold to

304 Odeon by Scophony was commercial or experimental?

Mr. BLAIR. Has that been marked for identification?

Mr. MARKER. No.

Mr. BLAIR. Wouldn't you be good enough to mark it for identification so that we know what document is being referred to for the purpose of refreshing his recollection?

Mr. MARKER. Will you mark this as a Government exhibit for identification?

(Photostat of reprint from the Financial Times of June 6th, 1939, is marked "Government's Exhibit No. 18" for identification.)

Q. Mr. Elcock, have you examined Government Exhibit No. 18 for identification, does that refresh your recollection as to whether the equipment purchased by Odeon from Scophony, Ltd., was commercial or experimental equipment?

A. No. This is a speech made by Sir Maurice Bopham Carter at Scophony before I was connected with it. I was going to say, that it was one that was sufficient to give public exhibitions.

Q. Continually?

A. As far as I recall; yes.

305 Mr. PICKERING. Will you repeat the answer?

(The reporter read the last answer as follows: "No. This is a speech made by Sir Maurice Bopham Carter at Scophony before I was connected with it. I was going to say, that it was one that was sufficient to give public exhibitions.")

Q. Is this your recollection, that the equipment purchased by Odeon from Scophony, Ltd., was not purchased for one exhibition but for several continuous exhibitions?

A. As far as I recall, it was purchased for use at the Odeon Theater, Leicester Square.

Q. It was purchased, was it not, to pick up television broadcasts sent out by the Government television broadcasting station which were to be shown on the screen of the Odeon Theater?

A. I can express my view as a member of Odeon, and the answer would be yes.

Q. Do you recall, Mr. Elcock, whether an additional charge was made by the theater for programs in which television broadcasts were shown?

A. I have no recollection.

Q. You do not recall any added premium being charged for these broadcasts?

306 A. I can't, no.

Q. Do you recall whether or not a broadcast of a prize fight was shown to the audience at the Odeon Theater?

A. Yes, there was. There it stands out in my memory.

Q. Do you recall whether an additional admission charge was made?

A. No; I don't remember.

Q. Do you recall whether a broadcast of a horse race was shown to an Odeon Theater audience?

A. I believe so; but I do not recall it whether it was a race or something else. I did not see it.

307 Mr. PICKERING. I move to strike out the answer as incompetent.

The WITNESS. I think—I can't recall it.

Q. Do you recall whether there was a television broadcast of the King and Queen?

A. I do not recall it.

Q. Do you recall whether or not there was a good attendance at the television broadcast when the prize fight was telecast?

A. If you are asking from my recollection, I would say, yes.

Q. Do you recall if there were considerable crowds that turned out to attend that showing?

A. That is going too far for me.

Q. Do you recall that there was a good attendance?

(No answer.)

Q. Do you recall whether there was a sell-out attendance?

A. I should say, yes.

Q. Do you recall if the event telecast—at least as to the prize fight—was reviewed in the press?

A. You are straining me an awful lot.

Q. Do you recall?

308 A. It must have been. It is inevitable.

Mr. PICKERING. I move to strike out the answer.

Q. Do you recall whether the broadcast received a favorable press?

Mr. PICKERING. I object to that as not the best evidence and incompetent.

Q. Will you answer the question, Mr. Elcock?

A. I am thinking. Will you read it again?

(Reporter reads last question.)

A. As far as I recall; yes.

(At this point an adjournment was taken to go before Mr. Justice Rifkind in the U. S. Courthouse for rulings.)

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19TH FLOOR, U. S. COURTHOUSE,

April 29, 1946, 4:30 p. m.

Before: Honorable SIMON H. RIFKIND, District Court Judge.

Appearances: (All parties present as before.)

Argument and rulings

Mr. MARKER. This is a request for rulings on questions which have arisen in the examination in the matter of U. S. against

Scophony. I am representing the Government. Some disagreement has resulted.

The COURT. Who is the examining party?

Mr. MARKER. The Government is examining Mr. Elcock, and I am representing the Government.

The COURT. And you are examining a witness or a party?

Mr. MARKER. A witness.

The COURT. Who is objecting?

Mr. MARKER. Mr. Pickering.

The COURT. I mean for and on whose behalf is he objecting; on behalf of defendant?

Mr. PICKERING. I am not here on any objection of mine.

310 Mr. MARKER. Mr. Pickering just told me that he is withdrawing certain questions that he was propounding to the witness, to which Mr. Cherry, counsel for another defendant, is objecting. Mr. Pickering tells me that all the questions to which objections were made and to which a ruling had been intended to be requested are withdrawn. So it seems to me there is just one question remaining to be decided, Your Honor, and that is this: We started this cross-examination at 10 o'clock this morning, and on cross-examination various new matters were gone into, to which I objected on the record, but over my objections were continued.

The COURT. Who was cross-examining, the defendant's counsel?

Mr. MARKER. Mr. Pickering, the counsel for one of the defendants, was cross-examining Mr. Elcock.

The COURT. And what was the ground of your objection?

Mr. MARKER. He went into new matters which I did not treat on direct. I am not raising that now. We have let it go.
311 I am not asking for a ruling at this time, but it raises the situation that on redirect I want to go into them. They are quite important matters; and the question of time enters into it. We worked last Thursday and Friday, and we also worked last Saturday. I am willing to work eight, nine, ten hours a day, at least nine hours a day, until six o'clock. The gentlemen indicated that they insisted that they wanted to go on, even if it is until 12 o'clock, and I want a limitation on the amount of time. It seems to me that is the only question that is going to be presented.

The COURT. The question of pure administration, the administration of the hearing, to determine the hours during which the hearing shall proceed.

Mr. BLAIR. If Your Honor, please, I am personal counsel for the witness. I am being very careful about that, because I am also appearing specially in the action for the defendant Scophony,

Limited, and I do not wish that it be pressed at the taking of this deposition. The witness is scheduled to sail from Halifax on Friday. We were before Judge Leibell on Friday; and
 312 the witness will have to leave New York, however, this Wednesday. So Judge Liebelle ordered that the examination of the witness proceed on Saturday at one o'clock, and if it was not finished on Saturday that we meet at 2 o'clock on Sunday to finish the direct, in order for the cross to begin this morning at 10 o'clock. It so happened that counsel for the Government did finish on Saturday, and we started this morning at 10 o'clock on cross-examination.

Now, I have this situation confronting me. I am on trial down in Trenton in an antitrust suit. I have a man down there. It may be this week my witnesses will be called. We are representing one of the defendants in this antitrust suit against General Electric. I do not know whether they will be called tomorrow or whether they will be called on Wednesday; but it is very important from the witness' point of view, and my own personal convenience, that we proceed as fast as possible. I cannot see how the Government can be prejudiced. We are all willing to stay here. I know Mr. Cherry feels very much the same as I; and we represent very different interests.

Mr. MARKER. I just want to say this, Your Honor:
 313 Government Counsel believes it is up to it to try to expedite.

The Court. We will assume that.

Mr. MARKER. I had preferred to take this deposition at a later time for various reasons; but we started it as soon as possible. What I did not tell Judge Leibell, but I am going to tell you, is that when we started, this deposition was originally slated at 10 o'clock on Thursday, and at the request of counsel for the witness, we deferred it until two o'clock. And then they requested, would we adjourn it until Monday. That is the first start of the deposition to my knowledge, and we said no, there had been too many adjournments in this matter, and we were going to start it at two o'clock.

The Court. So you did not adjourn that hearing?

Mr. MARKER. We did not adjourn until Monday. And Mr. Elcock, in the past, has had some reservations; he had to cancel them, and he might in the future. The point I am making is this, that it is rather queer that on Thursday Mr. Elcock and his counsel could ask the Government for an adjournment to start on Monday.

314 The Court. Last Monday?

Mr. MARKER. This Monday; should start today; and then it was so urgent with them.

The COURT. That calls for an explanation. What is the explanation?

Mr. BLAIR. The explanation for it is this, Your Honor: We were hopeful that the time could be used for the purpose of making a general all-round settlement, not only of this trust suit, but of certain internal difficulties of the various stockholders; and as Mr. Marker indicated, there was a request by me that he permit it to begin today. I had no idea that the deposition would take several days. As a matter of fact, I made appointments based on the fact that it would take only a day.

The COURT. What about this departure from Halifax? Is that on business?

Mr. ELCOCK. I have been here seven weeks, and it is about time I got home; and I have already postponed it. I should have sailed last Wednesday night on the "Aquitania." I came here, expecting to be here a fortnight.

315 The COURT. Of course these are risks that people take these days. You say you have reservations?

Mr. ELCOCK. Very definitely; yes.

The COURT. For what date?

Mr. ELCOCK. The trouble is to get up there.

The COURT. When is she scheduled to sail?

Mr. ELCOCK. I've got to be on board at 7 o'clock on Friday.

The COURT. P. m.?

Mr. ELCOCK. Yes.

The COURT. How are you traveling from here to Halifax?

Mr. ELCOCK. I have to go by train.

The COURT. How long does it take?

Mr. ELCOCK. I was expecting to leave at 6 on Wednesday. It was two days coming down.

Mr. MARKER. Why must you go by train all the way back?

Mr. ELCOCK. Because of my luggage.

Mr. MARKER. Couldn't you by Wednesday dispatch a certain amount of your luggage by train and leave yourself a smaller pack to fly on Thursday?

Mr. ELCOCK. I wish it were possible. The question of these customs—

316 The COURT. It is rather difficult for him to ship it. He could not be sure that it would be there on time.

Mr. MARKER. Your Honor, there is one other fact that we have not gone into. On redirect, in view of the fact that they have gone into matters of some transactions that are novel, I would really like an opportunity to get the material relating to the material that was brought out, and I would love to have some time to do so.

The COURT. I am not going to curtail your time as long as you proceed with your examination, even if he misses the boat, as long as you are actually engaged in an examination. But what they are asking is simply that we prolong the hours of trial, and the way I am treating it is this:

Supposing this matter were held before a Referee or a Master, whether the Master would not, under those circumstances, do so as it might well have been, and I asked for a longer trial day, I know I have done it in court, even with a jury, where it would serve some fair convenience. I don't know why I shouldn't do it here.

317. That does not mean I should expect you to do the inhuman thing. How many hours do you want to go on?

Mr. BLAIR. I will go on as long as you will permit. Examination is a strenuous business. I am just sitting tight. I am just counsel for the witness.

Mr. PICKERING. I doubt whether Government's counsel has more than one hour or two. I did not open very much.

The COURT. I am not going to restrict him.

Mr. PICKERING. I did not expect your Honor to restrict him. I would like to know how much time.

Mr. MARKER. I stated, in view of the way the examination proceeded, that I thought it would be a shorter time; but in view of the matter of the objections that have occurred, I do not see—

The COURT. You have to answer, regardless of the objections.

Mr. MARKER. They are going into the record; and the reason.

The COURT. That does not have to be done. On the examination in court you state your objection, and you can assign any
318 ground you like, and you can save yourself a lot of time.

Mr. PICKERING. I have restricted myself to the objections which must be made.

The COURT. All you have to do is to state your objections. You do not have to elaborate the reasons.

Mr. MARKER. In view of that, time has become a very big factor; in view of the fact that we had to adjourn the cross-examination to come here.

The COURT. Resume the cross-examination.

Mr. PICKERING. I am through.

The COURT. That is settled. The second point is settled. As long as you are engaged in an examination, he cannot leave, even if he misses his boat. That is too bad. Those are the risks of litigation. I suppose he is an important witness, otherwise he would not have come here to be examined.

Mr. BLAIR. He did not come here to be examined.

Mr. MARKER. He came here in connection with the case.

The COURT: However, I am going to ask you to persist in the examination as long as it is physically possible to do so, because

319 I know it is hard to get accommodations with sea travel these days, and I want to accommodate the witness as far as possible, especially if other counsel are willing. It is your examination, and conceivably they might complain of undue pressure. You are going to go ahead.

Mr. PICKERING. Yes. I am ready to finish it now.

The COURT. How many hours do you think you can continue without breaking up? You look fairly fit.

Mr. MARKER. Frankly, I would not care to stay on for more than two hours.

The COURT. Do you think you can finish in two hours?

Mr. MARKER. I hope so.

The COURT. Supposing you do go back, and if you are not through by six o'clock you can telephone; but do not call me after six. Call me at six o'clock; and then we will see what the situation is. We might ask you to take a recess and resume, or we might put it over till tomorrow morning. I don't know. If you want to try to finish to help him leave by Wednesday night—

Mr. ELCOCK. I have been trying to find out when I can go. It should be about Wednesday afternoon.

320 The COURT. Tomorrow is Tuesday. If you do not finish tonight, we may resume tomorrow; but I want you to make a real effort to get through by six; and you might tell me then it will take two or three hours more, or minutes. You do not have to call me; but if there is any question, you can call me.

Mr. MARKER. Has Mr. Cherry been informed that Mr. Pickering has withdrawn the question to which Mr. Cherry was objecting? That was the real reason.

Mr. PICKERING. I thought the primary reason was to get a ruling with respect to documents.

Mr. MARKER. Your questions remain on the question of the documents. Does that still remain?

Mr. PICKERING. I am not interested in that particularly; but that is the particular question we came up here for.

Mr. CHERRY. That is the question with which they are most concerned. The witness was served with a subpoena calling for the production of certain papers and records. He is a director of one of the defendant companies, the British Corporation which was involved in negotiations with two American corporations, resulting in the creation of a third, known as the Scophony Corporation of America. He has been served with a subpoena calling for his production of papers. He did not come here for the purpose of testifying. He therefore has

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not complete records. I would like to assure the production of those records insofar as they are within the control of the witness, and I would like to assure their production in such a form that there will be no question, or as little a question as possible as to their authenticity.

The COURT. What do you suggest?

Mr. CHERRY. I suggest that the witness be instructed that he produce all documents.

The COURT. Has he testified that he has them under his control?

Mr. MARKER. The subpoena only calls for those in his possession or under his control.

Mr. BLAIR. The subpoena does not call for the production of documents of Scophony, Limited.

The COURT. He has been asked to produce certain documents insofar as they are in his possession and control.

Mr. CHERRY. Yes.

322 The COURT. And you say he has not produced all of them.

Mr. CHERRY. He has produced some; others he has not.

The COURT. What is the answer?

Mr. CHERRY. He has testified that he has not them with him; that they are not in the United States.

The COURT. What do you want me to do?

Mr. CHERRY. I would like Your Honor to instruct the witness that if these documents can be found by him in England, they can be authenticated so that they may be offered in evidence here.

The COURT. How will they be authenticated?

Mr. CHERRY. Under our rules of practice.

The COURT. Before a consul?

Mr. CHERRY. Yes.

The COURT. Have I the power to issue such instructions?

Mr. BLAIR. Your Honor, I have volunteered that he will produce here such papers as he has been required by law to produce. I have not investigated the question of law. Whatever he is obliged to produce, he will produce. I think the real question comes
323 up about the identification of those documents.

The COURT. Is he a Director of the corporation, and are those documents records of the corporation?

Mr. CHERRY. Yes, Your Honor.

The COURT. A director normally does not have possession, ordinarily, unless he has custody and control.

Mr. MARKER. He is also Financial Controller.

The COURT. What is it you want me to do, and have I authority to do it?

Mr. CHERRY. I assume Your Honor has authority and therefore he is within the jurisdiction and amenable to the power of the Court, within the scope of the examination, and within the scope of all matters in issue before the Court, and I suppose your Honor has the power to instruct the witness to do outside of the jurisdiction what is necessary to tell this Court a full story of the litigation. For that reason I think the Court has the power to instruct the witness to obtain the documents and to have them authenticated and remitted to this country by either his counsel or the Government.

324 The COURT. Does anybody suggest that I lack that power, with respect to papers which are within his custody and control?

Mr. PICKERING. I question it. I never heard of such power exercised.

Mr. BLAIR. I have not had a chance to look into it.

The COURT. I will issue the instructions; if I have not the power, he will challenge when the documents are not presented and a motion is made to punish him for failing to do so.

You are instructed that with respect to all papers which are embraced within the subpoena which you have not yet responded to, that you do respond to it by remitting it to the Clerk of the Court.

Mr. CHERRY. Perhaps to his own counsel; it would be satisfactory to me, at any rate.

Mr. MARKER. Pursuant to the subpoena, he was supposed to produce to the Government.

The COURT. Well, let us have him send it to the Clerk of the Court duly authenticated. That leaves open the construction and the scope of the subpoena. That leaves open the construction of the existence of the power in this District Court
325 to make this order. That is a matter which will have to be passed on at some future time.

Mr. CHERRY. More than that I cannot ask.

The COURT. For the present moment, there being no disagreement with the Court's exercise of such power, I shall assume that I have it and I shall exercise such power as I have with respect thereto.

Mr. BLAIR. I should like, Your Honor, to reserve the right to object to that ruling after investigation. In other words, I do not want to waive any rights by conceding it without taking an exception.

EXAMINATION RESUMED

Mr. PICKERING. Just before we adjourned and went into court, there was marked "Government's Exhibit No. 18" for identification, and one or two questions were asked about it. We were rather disrupted as to what our procedure was. I would like now to record my objection to Government's Exhibit No. 19 for identification on the ground that it is incompetent, hearsay, not properly authenticated, and not binding upon the defendants whom I represent, and I move to strike out the questions and answers which were asked with respect thereto.

Mr. MARKER. I would say it shows on the record, and I think it might justly show, that when we went up to see Judge Rifkind, there were several questions that had been reserved which were asked by Mr. Pickering to which Mr. Cherry objected, and that after arrival at Judge Rifkind's chambers, Mr. Pickering stated that he was withdrawing those contested questions; and
327 therefore Judge Rifkind did not rule on those questions.

Mr. PICKERING. The questions which I asked prior to going up to court and to which counsel requested that the witness give no answer until there was a ruling by the Court, are now withdrawn.

WILLIAM GEORGE ELCOCK, previously sworn, resumed the stand and testified further as follows:

Redirect Examination by Mr. MARKER:

Q. Mr. Elcock, do you recall that when the British Broadcast Corporation was broadcasting television prior to the war that it was broadcasting on a standard of 405 lines?

A. No; I do not remember that. I have only learned since I have been here that that was 405.

Q. You have since learned that it was 405 lines?

A. Yes.

Q. Do you know if, when the British Broadcast Corporation renews broadcasting, whether that is the standard on which it is announced it will rebroadcast?

Mr. PICKERING. I object to the question as incompetent, not the best evidence; the witness is not qualified to answer.

328 A. As far as I recall, the Government have not yet settled on the number of lines.

Q. It is not settled?

A. I do not think so.

Q. It is still under consideration?

A. I am not really sufficiently informed about that to answer that.

Q. As far as you know?

A. It has not been.

Q. The matter has not been settled?

A. No.

Q. Has television broadcasting started in England since the end of the war?

A. Public television, no; had not started when I left England.

Q. Mr. Elcock, do you know whether or not an experimental demonstration of skiatron television has ever been made by Scophony, Limited?

A. I have no knowledge.

Q. You do not know whether Dr. Rosenthal, the purported inventor of the skiatron system, demonstrated an experimental model in England?

A. I have not personal knowledge.

Q. Do you know whether or not any wartime utilization of the skiatron inventions were used by the British Government during the war?

A. Yes; they were. The English Company has been paid.

Q. The Scophony, Limited, has been paid for wartime uses of the skiatron?

A. Yes.

Q. Skiatron tubes; skiatron patents?

A. Skiatron. As far as I am concerned, leave it go at that.

Q. What use was made by the Skiatron in the war uses?

A. I do not think the Government ever disclosed that.

Q. Do you know whether it was used in connection with Radar?

A. I assume radar. We believe that.

Mr. PICKERING. I move to strike out the answer as incompetent and not responsive.

Q. Were there any other Scophony inventions or patents which were used during the war?

Mr. PICKERING. By whom?

Q. By the Government?

A. I am not personally competent to answer. I want to use the word "informed." I am not sufficiently well informed to answer that.

Q. So far as you know, then, the only times for which Scophony, Limited, received payment from the British Government for the use of its patents related to the skiatron?

A. I can only say the other way around. I would like to be a little more definite; that the British Company received a payment from the Government for the use of the skiatron, and I am not informed about anything else.

Q. Mr. Elcock, you have testified that you know that the "B" stockholders have made a loan to the Scophony Corporation of America; is that correct?

A. Yes; I testified that I had been so informed since I have been here.

Q. So informed, or so reminded?

A. I would not like to say. Is there a difference? I should think I ought to say now informed, I would like to put it that way.

Q. On the basis of the documents that have been shown to you, have you since recollected that such a loan was made?

A. I have been ~~since~~ informed. My expression is "in-
331 formed."

Q. You do not recollect that such a loan was in fact made?

A. The form; no.

Q. Mr. Elcock, you have testified that the Odeon Theater which bought the Scophony Limited television set, resold it to Scophony, Limited; is that correct?

A. As far as I recollect, that is correct.

Q. Explain the circumstances of that resale.

A. As far as I recall, owing to the war the set was not in use, and Scophony made an offer to purchase, which offer I believe was accepted.

Q. Were you at the time that offer was made and accepted still connected with Odeon Theaters, Inc., as well as Scophony, Limited?

A. I have to break that up in two. I was connected with Odeon Theater, Ltd.; but I had no connection with Scophony, Limited.

Q. At that time?

A. At that time.

Q. What was the approximate date of the resale?

A. It must have been sometime after the outbreak of war, the
4th of September 1939; but I have not any more de-
332 tailed knowledge.

Q. Mr. Elcock, including this set that was resold by Odeon to Scophony, Ltd., what is your best recollection as to the number of television sets of all models that Scophony, Limited, now has on hand?

A. I have no knowledge; I only knew—You are throwing me back into those years; perhaps—let me have it again.

Q. No; I am speaking of the present.

A. How many sets they have? So far as I know, there are five.

Q. Five theater sets, or five altogether?

A. Five altogether. Was that question quite clear? Say that again.

Mr. MARKER. I will restate the question.

Q. How many Scophony television sets are now in inventory, so to speak, of Scophony, Limited?

A. None, as far as I know.

Q. None?

A. None, so far as I know. I was thinking about the American Company. None, as far as I know.

Mr. BLAIR. Now you are talking about the Limited Company?

The WITNESS. The English Limited Company.

333 Mr. BLAIR. Your prior answer—

The WITNESS. Related to the Scophony Corporation of America.

Q. What happened to the set that Limited purchased from Odeon?

A. As far as I know, it was sent to America.

Q. That was the set that was sent to America?

A. As far as I know.

Q. You are now testifying, as I understand it, that Scophony, Limited, sent all its available equipment to America?

A. No; I did not say. I did not know about the affairs of Scophony Corporation of America in those years.

Q. But Scophony, Limited, now has no television?

A. Scophony, Limited, the English Company, as far as I know, has no television set.

Q. Mr. Elcock, the 80 corporations of which you are a director, are these large sized or small sized corporations?

A. I would say they are comparatively small.

Q. Are any of these companies engaged in manufacturing activities?

A. I have already testified no.

334 Q. What is the nature of the activities in which these 80 corporations engage?

A. I think I have already testified as to this; but for clarification, cinema, moving picture exhibitions, legitimate theaters, hotels, and real estate.

Q. And these 80 corporations, are they closely held corporations, their shares?

Mr. FALLON. I object to the form of the question. It calls for a conclusion.

A. In most cases I am the principal shareholder.

Q. In some are you the sole shareholder?

A. You can't. Under the English Company law you have to have two shareholders; but in many cases it is just one holding as a nominee.

Q. As I recall it, Mr. Elcock, during Mr. Cherry's cross-examination you testified that in your conference with Mr. Hines the last time in London you discussed conditions in the United

States and in England generally, and then you specifically said, "at least as regards to television." Is that correct?

A. It does not sound like what I have said. Could I have it read back?

(Discussion off the record.)

335 A. I accept that, if you will, "future television."

Q. Also general?

A. General matters.

Q. Have you testified that you discussed with Mr. Hines the conditions in the United States and England?

A. Conditions; oh, yes.

Q. As to television?

A. What I was mentioning first, that we discussed general conditions, not television; as to political and world conditions; then I think I did devote—but to say that we discussed future television.

Q. Did you also discuss in those general conditions the conditions relating to the motion picture industry?

A. I could not answer that now.

Q. You could answer it as regards television. Why can't you answer it with regard to motion pictures? You also answered it with regard to general government conditions.

A. Mr. Hines is on the manufacturing end of equipment, and I am just on the exhibition of pictures.

Q. But you are both interested in the motion picture industry, are you not, you as exhibitor and he as a motion picture manufacturer, in the industry?

336 A. We have no common viewpoint there.

Q. You discussed it?

A. I could not say that; it is quite possible.

Q. That would seem to be the general condition in which you both would be interested?

A. I might say we discussed general conditions.

Q. Did you discuss the effect that the introduction and expansion of television might have on the motion picture industry?

A. Quite likely, because I have very definite views about it.

Q. Did you discuss the fact with Mr. Hines that a Government investigator had been looking into the files of Scophony Corporation of America?

A. No; I did not know anything about that.

Q. Mr. Hines did not inform you that that was the case?

A. No.

Q. You did not discuss the possible consequence of a Government investigator looking into the files of Scophony Corporation of America?

A. I did not know anything about it, so I could not discuss it.

337 Q. You did not know? You did not know?

A. Can I add that I would not have understood it any way. We have not any such legislation in England, and it would have been foreign to me.

Q. Well, insofar as such investigation might possibly have some consequence on Scophony, Limited's interest and investment in Scophony Corporation of America, would it not have been of interest to Scophony, Limited, as to the fact of the investigation and its possible consequences?

Mr. BLAIR. I object to that form of the question.

Mr. PICKERING. I object to the question, too. I further object to this line of investigation, that the time of the Government investigation has not been fixed and it does not appear that Mr. Hines had any knowledge of it at that time.

Q. Did you know that on or about May 1945, a Government investigator had approached and was examining into the records of Scophony Corporation of America?

A. I have no knowledge of such a position.

Q. Did you know that a Government investigator had asked for and obtained copies of the agreements between
338 Scophony Corporation of America and Scophony, Limited, and the other defendants in this action?

A. I had no knowledge of it.

Q. Did you know that certain counsel for Scophony Corporation of America had notified the Company that the basic agreements which are attached to the complaint were illegal under the Sherman Anti-Trust Law?

Mr. PICKERING. I object to that: that is leading and suggestive, and incorporating facts which are not in evidence here.

Q. Will you answer the question, please?

A. I do not recall that.

Q. Do you recall discussing with Mr. Hines as a result of the investigation being made by the United States Government the question of modifications to be made in the agreements that are attached as exhibits to the complaint?

Mr. BLAIR. You are speaking now, about what he said last fall.

Mr. PICKERING. I object to that as improper in form and assuming facts not in evidence, and not proper redirect examination.

I did not go into anything of that sort in my examination;
339 neither did Mr. Cherry; and it is not even remotely connected with it.

A. I repeat that to my knowledge the matter was not discussed. I had no knowledge of such an investigation.

Q. Have you testified that at least since your visit to the United States and conferences with Mr. Hines and Mr. Raibourn, that you then discussed possible modifications of the basic agreements that are attached as exhibits to the complaint in this action?

Mr. BLAIR. I object to that. I think this is a part of the so-called settlement negotiations; and I think it is highly improper for Government's counsel to interrogate into them.

Mr. FALLON. May I have a continuing objection?

Mr. PICKERING. To which I join.

Mr. MARKER. Yes.

Q. Will you make your answer to the question?

A. Will you repeat, Counsel?

Mr. BLAIR. Just a minute.

A. You asked me if I have already testified. If you asked me, I must read through this and see, unless you can rephrase it.

Mr. MARKER. I will rephrase it.

340 Q. Do you recollect, in your conferences with Mr. Hines, Mr. Raibourn, since your visit to the United States or at any other time, that you discussed the question of modifying the basic agreements that are attached as exhibits to this complaint?

Mr. PICKERING. The same objection.

Mr. BLAIR. I, as the witness' attorney, object on the ground that it is a highly improper question. I am really surprised to find any representative of the Government asking such questions, when he knows very well what the rules are on evidence in connection with the inadmissibility of such testimony.

Mr. PICKERING. I also object on the ground that it is not proper redirect.

Mr. MARKER. Note the objections and let us complete this.

Mr. FALLON. Let us have the question re-read.

(The reporter reads the question.)

Mr. MARKER. Note the objections. And give us a yes or no answer.

Mr. BLAIR. You are not supposed to answer yes or no unless you feel you can answer it yes or no.

A. No.

341 Q. Answer it the best way you can.

A. I did in the course of a general discussion.

Q. With Mr. Hines?

A. And Mr. Raibourn since I have been here.

Mr. BLAIR. What type of discussion?

The WITNESS. General discussions for a complete settlement.

Mr. FALLON. I move to strike out the answer on the ground of my continuing objections to all conversations occurring subsequent to the filing of the complaint.

Mr. PICKERING. I join in the objection.

Q. Mr. Elcock, do you know that Mr. Hines, who is a codefendant in this action, is President of General Precision Equipment Corporation?

A. Yes; I am so informed.

Q. Do you know that Mr. Robert T. Rinear is Vice President of the defendant General Precision Corporation?

A. I am so informed.

Q. Did you discuss in your conference with Mr. Hines last fall the fact that a Government investigator had conferred with Mr. Rinear on or about May 1945, relating to an investigation of the agreement between General Precision and Scophony, Limited, and Scophony Corporation of America?

Mr. PICKERING. I object to the question as incompetent, assuming facts not in evidence.

A. I have stated that I have no recollection of any investigation.

Q. Mr. Elcock, do you know whether under your Financial Controller agreement Scophony, Limited, could dispose of any of its assets without consulting with you?

Mr. BLAIR. I object to the form of the question.

Mr. PICKERING. I object to that question as incompetent, calling for a conclusion, not the best evidence, and not proper re-direct.

A. Just talking, without any documents; just ordinary commercial English, knowledge of business methods; the Financial Controller agreement would have nothing to do with the disposal of assets of the Company.

Q. Mr. Elcock, do you recollect that in the negotiations towards the agreements which are annexed as exhibits to the complaint herein, that Scophony, Limited, desired to establish a voting trust?

Mr. BLAIR. May I have the question read, please?

(The reporter thereupon read the question referred to.)

Mr. BLAIR. I object to the form of the question.

Mr. PICKERING. I join in the objection.

Q. Mr. Elcock, do you recall whether the question of a voting trust was ever under consideration with regard to basic agreements attached to the complaint herein?

Mr. PICKERING. By the witness do you mean?

Mr. MARKER. By Scophony, Ltd.

Mr. PICKERING. I object to the question as incompetent and not the best evidence.

A. It is not a clear question. I cannot answer it.

Mr. MARKER. Will you repeat the question?

(The reporter reads the question.)

Q. That is not clear?

A. No.

Q. Do you recall whether Scophony, Ltd., desired that the shares of Scophony Corporation of America, the A shares, which were to be allocated to Scophony, Ltd., should be voted pursuant to a voting trust?

Mr. BLAIR. I object to the form of the question. What is desired and what is not desired does not seem to me to be evidence.

Mr. PICKERING. I join in the objection.

Q. Do you recall whether or not Scophony, Ltd., advised Arthur Levey that the Board of Scophony, Ltd., wanted the shares of Scophony Corporation of America, which were allocated to it, that such shares should be subject to a voting trust?

Mr. FALLON. Same objection.

A. You will have to repeat that. Say it again.

(Question read by reporter.)

A. I have not any recollection of such a proposed arrangement.

Q. Do you recall, Mr. Elcock, insisting to the Board of Scophony, Ltd., that such stock should be placed in a voting trust in which Mr. Levey and Sir Bonham Carter could be the voting trustees?

A. I have some faint recollection of my wishing all the A shares to be voted by the Scophony, Ltd.; but as to what happened to that, I don't know.

Q. Do you recall whether or not the Board of Scophony, Ltd., took that position on the basis of your insistence?

A. I will use the expression, "My wish." I cannot recollect anything further than that.

Q. Do you recall whether or not you were the one who suggested that arrangement?

A. I can't recall that.

346 Q. Mr. Elcock, can you give us any example where the Board of Scophony, Ltd., acted on any matter contrary to your advice or position?

Mr. BLAIR. I object to that. That does not seem to me to be proper examination of this witness on any matter.

Mr. PICKERING. I certainly object to it as not proper redirect.

Mr. MARKER. Mr. Cherry went into the question of dominance of Mr. Elcock in the affairs of Scophony, Ltd., and I think that this matter relates to it. It is a proper question. The objection will be noted, and Mr. Elcock will please answer the question.

A. I have not any sufficient information before me where I could give you any specific case either way.

Q. Do you know whether in fact any such occasion ever occurred?

A. May I repeat my previous testimony, that I never had cause to use the powers given to me under my Financial Controller agreement.

347 Q. Did you have power given under your Financial Controller agreement to intercede in the action of the Board of Scophony, Ltd.?

Mr. BLAIR. I object to it as incompetent, and not the best evidence.

Mr. PICKERING. The same objection.

A. I can't answer that without the document in front of me.

Q. I repeat my question. Do you recall any occasion when the Board of Scophony, Ltd., acted on any matter contrary to your position in such matter?

Mr. BLAIR. I object to the form of the question. You assume that there actually was some situation where it was contrary to what he said or desired. I do not see how that is evidence.

Q. Mr. Elcock, was there any occasion, when the Board of Scophony, Ltd., took action contrary to a position that you took?

A. As far as I recall, there never has been an occasion where any resolution has not been carried unanimously.

Mr. MARKS. At this time I offer for identification as Government Exhibit No. 19 a photostat of what purports to be a
348 copy of a cablegram to Arthur Levey from Sir Bonham Carter dated September 11th, 1942.

(Photostatic copy of cablegram to Arthur Levey from Sir Bonham Carter, dated September 11th, 1942, is marked "Government's Exhibit No. 19" for identification.)

(Discussion off the record.)

Mr. MARKER. May I at this point agree upon Government's Exhibit 4, the original of which was submitted to the Government but was returned to the counsel for the witness and a photostatic copy thereof was received and marked as such "Government's Exhibit No. 4" for identification. Is it agreed by all counsel that it had been properly authenticated?

(Discussion off the record.)

Mr. PICKERING. With reference to Government Exhibit No. 4 for identification, I will state on the record now that I make no objection to the proper identification and authentication of Government Exhibit No. 4 and I have agreed that the photostat may be substituted for the original. I am not waiving any objection
349 as to the competency on other grounds or as to relevancy and materiality. That can be taken up at the trial; but I will say, as far as that document is concerned, I concede that you have proved it.

Mr. MARKER. I think that will take care of the matter for the present purposes.

Mr. PICKERING. Returning to Government's Exhibit No. 19 for identification, I object to such Government Exhibit No. 19 on the ground that it is incompetent, hearsay, and not properly authenticated.

Q. Mr. Elcock, having examined Government Exhibit 19, do you now recall when it was made, you insisted that the Board of Scophony, Ltd., take the position that the shares of A stock of Scophony Corporation of America allotted to it be placed in a voting trust?

A. That telegram would indicate that; yes.

Mr. PICKERING. I move to strike out the answer as not responsive, incompetent, and hearsay.

Q. Mr. Elcock, would you explain why you wanted the A shares of Scophony stock to be placed in a voting trust?

A. As far as I could recall, not the reason of that date but of the present date, would be that there should be unanimous voting on a block of shares.

350 Mr. FALLON. I move to strike the answer out as not proper testimony. It is an inference by the witness and not proper recollection.

Mr. PICKERING. I join in the motion.

Q. Mr. Elcock, can you recollect now why you wanted, on or about September 1942, to have the A shares of Scophony Corporation of America placed in a voting trust?

A. No; I cannot recall.

Mr. FALLON. I object to any testimony as to the witness's purpose.

Mr. MARKER. I did not ask him the purpose. I asked him to explain why.

A. I cannot.

Q. Mr. Elcock, was it the plan of such voting trust that the voting trustees, which would include Mr. Levy, would be bound to act pursuant to the directions of the Scophony Board of Directors?

Mr. FALLON. I object to the form.

A. If there had been such a trust I suppose that would have been the practical effect.

Mr. PICKERING. I move to strike out the answer as hypothetical.

351 Q. Was the plan to place any of the A shares of Scophony Corporation of America in a voting trust abandoned?

A. I thought you were going to put the question—will you please repeat it?

(The reporter reads the last question.)

A. I don't recall.

Q. Was it carried out?

A. Not as far as I know.

Q. It never went into effect?

A. Not as far as I recall.

Q. Do you know about what date the decision not to carry out a voting trust took place?

A. I have no information.

Q. Do you know whether after the arrangement of the voting trust plan Scophony, Ltd., or Sir Bonham Carter ever directed or suggested to Arthur Levey, president of Scophony Corporation of America, as to the manner in which he should act in the affairs of Scophony Corporation of America?

A. I have no recollection. Can I add to that: other than a power of attorney.

352 Mr. BLAIR. Which has been produced in evidence, regarding the voting at an annual meeting, as Government's Exhibit No. 10 for identification.

Mr. MARKER. At this time, I offer as Government exhibit for identification No. 20 a photostat of what purports to be a copy of a cablegram to Arthur Levey from Bonham Carter, dated January 28th, 1943.

(Copy of cablegram to Arthur Levey from Bonham Carter, January 28th, 1943, is marked "Government's Exhibit No. 20" for identification.)

Q. Mr. Elcock, having examined Government Exhibit No. 20 for identification, do you now recall whether it was on or about January 1943 that Scophony, Ltd., discontinued its plan to put the A shares in a voting trust and consented to the A shares being issued to certain named parties?

A. I am prepared to say, reading that exhibit, that Scophony, Ltd., had then abandoned its proposal to create a voting trust.

Mr. PICKERING. I object to Government Exhibit No. 20 for identification as evidence of anything. It is incompetent, hearsay, and not properly authenticated, and not binding upon any of the defendants whom I represent.

353 Q. Mr. Elcock, do you know whether Scophony, Ltd., has adopted the position that the Scophony Corporation of America shall not engage in the development of research or act as a manufacturing company under the Scophony patents?

Mr. PICKERING. I object to that as incompetent, hearsay.

A. I do not think I am competent to answer that. I do not think I am sufficiently well-informed with reference to the agreements.

Q. Mr. Elcock, my question has nothing to do with the agreements. Will you read my question, Mr. Reporter?

(The reporter reads the last question.)

A. I am not aware of anything.

Q. Do you know whether Scophony, Ltd., now takes that position?

A. You will have to read the question again. I am not aware of anything. That will do.

Q. Mr. Elcock, you testified that you came over to this country in order to seek a solution to the impasse that developed generally within SCA?

A. Yes.

354 Q. Did you or did you not discuss with the Board of Scophony, Ltd., or other officials of Scophony, Ltd., as to what the views of Scophony, Ltd., would be?

Mr. BLAIR. I object to this whole line of questioning. It all comes after the date of the filing of the complaint. It has no possible relevancy here, and I do not want to get this witness involved in a long examination by counsel on matters which I am sure by any remote conception would not be received in evidence.

Mr. MARKER. Would you read the question?

A. I do not understand.

(Question read by the reporter.)

Mr. PICKERING. I object to the form of the question.

Q. Are we to understand, Mr. Elcock, that the power of Scophony, Ltd., gives you a power of attorney which has here been introduced as Government Exhibit No. 4 for identification, which carries complete irrevocable power with regard to the interests of Scophony, Ltd., in Scophony Corporation of America, without discussing with you the desires or viewpoint of the Board of Directors or such officials?

355 Mr. BLAIR. I object to the form of the question. I think if you want to ask him about the exhibit itself, that is one thing; if he received it. To ask him to answer the question which you characterized as you do, I object.

Mr. PICKERING. I object to the form of the question. It is characterizing a document which is the best evidence; and it is not proper redirect examination.

Q. Did you discuss with the Board of Scophony, Ltd., or with other officials of Scophony, Ltd., the position that they would take with regard to the impasse that developed in the affairs of Scophony Corporation of America prior to the time that they executed to you the irrevocable power of attorney which is set forth in Government's Exhibit for identification No. 4, and prior to your recent trip to the United States?

Mr. PICKERING. Same objection.

Mr. BLAIR. I still maintain that this all goes into matters which are subsequent to the filing of the complaint and the question,

therefore, I object to as to form, and for other reasons as well.

356 A. I cannot recall anything specific, as the obvious object of my visit was to investigate.

Q. You were also empowered to act; were you not?

A. The power of attorney speaks for itself.

Q. Do you know whether you are empowered to act on behalf of Scophony, Ltd., with regard to its interest in Scophony Corporation of America?

A. I think that is the interpretation of a legal document which has been produced in evidence. I regard myself as having power.

Q. You regard yourself as having power to dispose of or otherwise deal with Scophony, Ltd.'s interest in Scophony Corporation of America?

A. I regard myself as having full power to do anything that I may decide in connection with the affairs of Scophony, Ltd., as applicable to their American investment.

Q. Before the Board of Scophony, Ltd., acted to confer upon you such power, did it or did it not discuss with you the ideas of the Board and the position of the Board with regard to the impasse within Scophony Corporation of America?

Mr. BLAIR. Same objection that I have been making all along.

357 A. Including specific terms; no.

Q. You mean it did not instruct you to carry out a specific plan; is that correct?

A. How could it when I came out here to investigate.

Q. Did it discuss with you the question of manufacture in the United States by Scophony Corporation of America under the Scophony patent?

A. Will you repeat the question?

Mr. BLAIR. I will take it that I will have a continuing objection to all of these questions which relate to discussions and evidence after the filing of the complaint.

A. I have no particular recollection of that subject.

Q. Did the Board advise you that it deemed General Precision Equipment Corporation best qualified to carry on the manufacturing and development of Scophony equipment within the United States?

A. It was not in a position to offer such a proposition.

Q. It was not?

A. No; the Board would never have; how could they?

Q. Do you know whether Scophony, Ltd., through its chairman, Sir Maurice Bonham Carter, informed Arthur Levey, president of the Scophony Corporation of America that it would be wrong for Scophony Corporation of America

to enter into development under the Scophony patents or to manufacture under the Scophony patents?

A. I am not aware of that.

Q. Do you know whether Scophony, Ltd., through its chairman, Sir Maurice Bonham Carter, advised Arthur Levey, president of Scophony Corporation of America, that Scophony, Ltd., was satisfied to leave development of Scophony processes within the United States to General Precision Equipment Corporation?

A. I am not aware of that.

Q. Do you know whether Scophony, Ltd., through its chairman, Sir Maurice Bonham Carter, asked Arthur Levey to act in accordance with such views?

A. I don't know. I have no recollection.

Mr. MARKER. At this time I offer for identification Government Exhibit No. 21, which purports to be a photostat of a letter addressed to Arthur Levey from Sir Maurice Bonham Carter dated January 3d, 1946.

(Photostat of letter addressed to Arthur Levey from Maurice Bonham Carter, dated January 3d, 1945, is marked "Government's Exhibit No. 21" for identification.)

Q. Mr. Elcock, do you recognize the signature at the end of Government Exhibit No. 21 for identification?

Mr. PICKERING. I object to Government Exhibit No. 21 for identification on the ground that it is incompetent, hearsay, not properly authenticated; and I object to any interrogation with respect thereto.

A. Yes; it would be Sir Bonham Carter's signature.

Q. Do you recognize that as Sir Maurice Bonham Carter's signature?

A. Yes.

Q. Mr. Elcock, having examined Government's Exhibit No. 21 for identification, do you now recall whether you ever discussed with any official of Scophony, Ltd., in or about January 1946, for Scophony Corporation of America to engage in development work or to engage in manufacturing under the Scophony patents within the United States?

Mr. PICKERING. I record a continuing objection to interrogation of this witness with respect to Government Exhibit No. 21 for identification.

360 A. I do not recall any discussions arising which resulted in the sending of that letter.

Q. Mr. Elcock, would you answer the question I asked?

Mr. MARKER. Mr. Reporter, will you repeat the question?

(The reporter read the last question.)

A. I can't recall any specific discussion.

Q. You do not recall whether the Board of Scophony, Ltd., or whether you discussed with any official of the Scophony, Ltd., before you were empowered to act for Scophony, Ltd., to the effect that it was undesirable to permit Scophony Corporation of America itself to engage in developing or manufacturing activities?

A. I do not recall any specific discussions. And I came over here with a completely free hand to investigate.

Q. I am not asking for any specific discussions. I am asking for any discussion on such subject matter.

A. I can't recall any.

Q. Have you examined Government's Exhibit 21 for identification?

A. Yes.

Q. Now, Mr. Elcock, do you now recall whether or not in 361 any discussion you had with the Board of Scophony, Ltd., or with any official of Scophony, Ltd., that it was the position of Scophony, Ltd., that General Precision Equipment Corporation should engage in the development and manufacturing of Scophony equipment within the United States?

A. I would like that again.

(The reporter read the last question.)

Mr. PICKERING. I object to this question upon the grounds previously stated, and upon the further ground that it relates to matters transpiring since the commencement of the litigation.

A. I cannot recall any discussions on that subject.

Q. Mr. Elcock, do you recall whether around March 1945, Scophony, Ltd., advised Arthur Levey that it did not desire the reelection of Joseph Swan or Franklin Field as directors in Scophony Corporation of America?

A. I have not any information on this subject.

Q. Do you recall whether Scophony, Ltd., notified Arthur Levey that it was in agreement with him that it would be desirable to replace Mr. Swan and Mr. Field as Directors on the Board of Scophony Corporation of America representing the A stockholders?

A. I have not any information of it.

362 Q. Mr. Elcock, you have testified that Scophony, Ltd., consulted you in connection with the entering into of contracts with the British Government in connection with war orders?

A. War orders; yes.

Q. Is that correct?

A. Yes; in connection with war orders.

Q. Do you recall whether or not you took any part in initiating or obtaining such Government contracts or orders for Scophony, Ltd.?

A. No. They were automatically placed by the Government.

Q. Mr. Elcock, you testified that Mr. Levey sent communications to Scophony, Ltd.; is that correct?

A. I do not think I testified to that. I think the correspondence was only personal between Bonham Carter as chairman. That may be only a technical point, but I think that should be cleared.

Q. Do you know whether Arthur Levey sent communications at various times to Sir Maurice Bonham Carter relating to the affairs of Scophony Corporation of America?

A. I only know that he sent numerous communications. What the content are, I do not know.

363 Q. You know he sent numerous?

A. Yes.

Q. Over the past several years?

A. Since I have been connected with the company.

Q. Did you ever examine any of those communications?

A. I may have done in the early days.

Q. You read some of them?

A. Yes. I could not say which.

Q. Were they detailed reports?

A. I can't recall at this stage.

Q. You testified, have you not, that they were lengthy reports?

A. Very lengthy.

Q. Do you recall whether they were detailed reports as to the activities of the Scophony Corporation of America?

A. I could not answer that. I do not recollect.

Mr. FALLON. I suggest that this is all covered by his examination in chief.

Mr. MARKER. At this time I offer as Government Exhibit for identification No. 22 a photostat copy of what purports to
364 be a cablegram to Arthur Levey from Bonham Carter dated June 27th, 1945.

(Copy of cablegram to Arthur Levey from Bonham Carter, June 27th, 1945, is marked "Government's Exhibit No. 22" for identification.)

Mr. MARKER. I am through on redirect.

Mr. PICKERING. I object to Government Exhibit No. 22 for identification on the ground that it is incompetent, hearsay, not properly authenticated, and not binding upon the defendants whom I represent, and not evidence of the facts allegedly therein recited.

365 Re-cross examination by Mr. CHERRY:

Q. Will you describe the nature of the war production of Scophony, Ltd.?

A. I will have to be very general because I understand so little. The words that stand out in my mind is a machine called a Kine-

Q. That, by the way, is unrelated to Scophony Patents?

A. I don't know. That was one of the machines; and various training machines. Mainly we worked for the Ministry of Aircraft Production. We made a high speed motor, a high speed camera; very many products.

Q. What work was done specifically related to the Scophony patents that you know of?

A. I am not a competent person to answer.

Mr. MARKER. Just a minute. I do not think that question is very clear. You mentioned high speed motors. That was covered by Scophony patents?

The WITNESS. Frankly, I am not a competent person. I was asked a specific question about production, but I am not
366 competent. I am not the first bit technical, and I could not take this pencil to bits; and also I want to say, going back, most of the work was on the secret list.

Q. So that even you as Director and Financial Controller do not know what the nature of it was?

A. May I say this. It may be of interest to you. I do not think it is evidence: That when I went through the works they stopped working; even when I went through the works, they stopped production.

Q. Will you examine this sheet, apparently a photostat, dated the 10th of September 1942, and captioned "Scophony, Ltd., Chairman's speech" and disregard the red lines.

Mr. BLAIR. So that there might not be any later confusion, I suggest that we mark this for identification.

Mr. CHERRY. Will you please mark this.

(A printed copy of Scophony, Ltd., Chairman's Speech, is marked as "Defendant SCA's Exhibit A" for identification.)

Q. Is this a copy of the chairman's speech of the date it bears, circulated at about that time?

A. Mr. Cherry, as far as I recall, I was not a director
367 of the company at that time. If you can produce the annual accounts which accompany that, I might be able to tell you. I don't know. I can't tell you whether I had anything to do with that report at all.

Q. Is it a statement of fact as you know it?

Mr. PICKERING. I object to that as incompetent, not the proper method of proving the facts therein stated.

A. It deals with accounts therein when I had nothing to do with the company. It deals with accounts of the 31st of March 1940—31st of March 1941, before I was associated with the company. I am not a signatory to it.

Q. No, you are not; but you appear to have been a director at a time prior to the date of Exhibit A and I have reference to the Government Exhibit No. 1 for identification, which I would like to call to your attention, just to fix the time in your mind.

A. Can I quote you at this minute: "Mr. W. J. Elcock, alternate director for Mr. Oscar Deutsch."

Q. You were not then a director on December 10th, 1942?

368 A. Not to my recollection. If you produce the accounts which accompany that, I will be able to give you a specific answer.

Q. I do not think I have had an answer to my question as to whether the facts recited in this document are true to your knowledge.

Mr. PICKERING. I renew my objection. The question is incompetent; it calls for hearsay testimony and it is not a proper method of proving the alleged facts therein stated.

A. I am not competent to answer in full.

Q. Will you read through the instrument and indicate to us by reading aloud those portions of it which you know of your own knowledge to be true?

Mr. PICKERING. I object to SCA Exhibit A for identification on the grounds that it is incompetent, hearsay, not properly authenticated; and I object to any interrogation of the witness of the witness with respect thereto; and I object to this method of proving facts as incompetent and hearsay.

A. You want me to read that.

Q. Yes, please.

369 A. I will read it to the best of my recollection.

Q. That portion which, of your own knowledge, is a fact.

A. "We were only able to meet the demand through the assistance of Mr. W. G. Elcock, who took over the Debenture Debt and supplied us with further resources to meet certain pressing liabilities and also to provide some working capital."

"In return for this assistance an agreement has been entered into by the Board with Mr. Elcock as follows:"

Q. With the Board of Scophony, Ltd.?

A. Yes. I do not recall the exact terms, but I assume that this is a properly printed document.

Q. To the best of your knowledge?

A. To the best of my knowledge, after No. 1 and No. 2 insofar as the first paragraph is concerned.

370 Mr. CHERRY. To save time, where Mr. Elcock indicates those paragraphs, will you copy them into the record?

Mr. PICKERING: The copying of them into the record will be subject to my objection.

The WITNESS. And No. 3, which deals with the SCA, and which is a matter of record, also my agreement.

Mr. BLAIR. I think there is going to be some confusion here.

The WITNESS. Paragraph 3 of No. 2.

Q. The first numbered paragraph, No. 1?

A. Yes.

Q. And do you include all of those following No. 2?

A. No; I made it very specifically, the first one.

Mr. CHERRY. That is sufficient for my purpose.

The WITNESS. The rest of it deals with the charge, which is a matter of general record.

(And the following is a copy of the paragraphs referred to by the witness, Defendant's Exhibit A for identification:)

371 "2. All the 100 A Ordinary Shares referred to in the Resolution set out in the Notice under the heading 'Special Business' will be allotted to Mr. Elcock credited as fully paid up."

Q. The first numbered paragraphs, 1 and 2, you adopt as true?

A. Yes; to the best of my recollection.

Mr. PICKERING. That was not his testimony. He said the first numbered paragraph and the first paragraph under No. 2.

Q. Are you acquainted with the sale by Scophony, Limited, of certain apparatus to the Soviet Government in 1938?

A. No; I was not connected with the Company.

Q. You never heard of such a sale?

A. No.

Q. Were you advised of the fact that Mr. Deutsch, of Odeon, Limited, stated publicly that he was prepared to order 60 sets of the supersonic receiver?

Mr. PICKERING. I object to the form of the question; assuming facts not in evidence.

A. I was not aware, but he had great confidence in Scophony.

Mr. PICKERING. I move that the latter part of the answer be stricken out as not responsive.

Mr. FALLON: I join in the motion.

372 Mr. PICKERING. Also on the ground that it is incompetent.

Q. Was Odeon, Limited, to your knowledge prepared to order additional theater projectors based on the supersonic patents?

Mr. FALLON. I object to the form of the question; and as incompetent.

Mr. PICKERING. I join the objections.

A. As far as I recall, Odeon was quite satisfied to order further equipment.

Q. And did Odeon express that to Scophony, Limited, at the time in any way?

A. I can't answer that; I am not competent to answer. I am not so informed.

Q. All wireless, be it radio or television, is government-operated in Great Britain, is it not?

A. There is no commercial broadcasting of any type within the British Isles.

Q. Would it be true to say that Scophony, Limited, is an engineering organization engaged solely in research work?

Mr. FALLON. I object to the question as hypothetical.

Mr. PICKERING. I join in that.

373 ♦ ♦ Mr. CHERRY. Will you please repeat the question?

(Question read by the reporter.)

A. No; it has a works with 200 employees.

Q. And is engaged in actual manufacturing of equipment and precision and radio devices?

A. It is engaged in manufacturing equipment.

Q. Including equipment based upon the Scophony patents?

Mr. FALLON. I object to the question as calling for an opinion.

A. I cannot give you that. I am not sufficiently technical.

Q. May I call your attention to that portion of Government's Exhibit No. 3 for identification which is entitled "Chairman's Speech for the Ninth Ordinary General Meeting," and which reads:

"We have in our organization a highly scientific staff whose thoughts and energies during the whole of the war period have been called upon to solve many of the difficult problems necessary for the development of Radar and other scientific instruments, and has enabled our Company to make a number of valuable contributions to the placing of this country in a leading
374 position in radio location. In this connection it was our 'Skiatron' which made possible the development of an instrument which enabled our night fighters to track the German raiders. Over 60 percent of our output during the war period has been in the production of Radar instruments based on our prewar television methods and the work was so important that for security reasons we were called upon to leave London and take a factory at Wells." Does that recall the fact to you, Mr. Elcock, that—

Mr. PICKERING. I object to the question on the same ground as urged against the exhibit, Government's Exhibit No. 3, when it was marked for identification, and upon the further ground that it

is hearsay; the statements therein contained are not binding upon the defendants whom I represent, and that this is an improper method of proving the alleged facts therein stated.

Q. Do you recall those words as part of the Chairman's speech for the Ninth Ordinary Meeting?

A. Those were in the speech circulated by the Chairman.

Q. And adopted and read by the Board of Scophony, Limited?

375 Mr. PICKERING. I object to that as not the best evidence.

A. Yes.

Q. At a meeting at which you were present?

A. Yes.

Q. And do those words recall to you the facts which they purport to relate?

Mr. PICKERING. The same objection.

A. I do not dispute it says, "reported to me by the General Manager who is very happy to accept it."

Mr. PICKERING. I move that the answer be stricken out as not responsive, and not constituting evidence of anything.

Q. Who is the General Manager?

A. Mr. Wikkenhauser.

Q. And reports of these facts were made by Mr. Wikkenhauser as General Manager to you as Director and Financial Controller of the Company?

Mr. PICKERING. Same objection.

A. Yes; not specifically to me, but to the Board.

Q. At a meeting at which you were present?

A. Yes.

Q. And was it Mr. Wikkenhauser's function and normal
376 course to make such reports to the Board as to the business of the Corporation?

Mr. PICKERING. I object to that as incompetent.

A. No. This was a specific matter upon which he was consulted, on the Chairman's speech; but it was a fact which is common knowledge among this industrial field of manufacture.

Q. In the light of those facts, is it true to say that Scophony, Limited, has never engaged in the manufacture and sale of any products under the so-called Scophony invention in England, in the United States, or in any other country, except that one of its experimental television sets was sold to the Odeon Theater in London, England, and was subsequently purchased by Limited?

A. I am not competent to answer that.

Q. So far as you know, was the only product manufactured and sold by Scophony, Limited, under the Scophony inventions the television set which was sold to Odeon?

A. You begin with—I was not associated with the Company when the set was sold to Odeon. In the second place, since I have been connected, I have testified quite clearly that the Company has been engaged solely on manufacturing war work, and I have no knowledge of any patents under which it has worked or produced equipment.

Q. And yet you accept as true the advice of Mr. Wikkenhauser that 60 percent of the output during the war period had been in the production of radar instruments based on television methods?

Mr. PICKERING. I object to it as incompetent. It doesn't make any difference what this witness accepts as true. That does not establish the fact.

A. The answer is yes. If I have a man, I trust him.

Q. Then you do not truly believe that the only product ever manufactured and sold by Scophony, Limited, based on the Scophony invention was the single set sold to Odeon?

A. That question I did not answer. I said I was not competent to answer it. I have given a very specific answer as of the date I was connected with the Company up to the present day.

Q. Do you believe that statement to be true?

A. I am not commenting upon that on which I have no evidence or some knowledge. It is purely a statement of fact.

Q. Exhibit A for identification speaks of the 100 "A" ordinary shares as being allotted to Mr. Elcock, credited as fully paid up. You have testified that you paid 25 pounds. Is that the full par value of the 100 shares?

A. Yes.

Q. In toto?

A. Yes.

Q. You have testified that you took the advice of counsel as to the requirement of shareholders' approval of the arrangement previously made between Scophony, Limited, and yourself?

A. I did not testify that. That was not my testimony. My testimony was that counsel's advice was taken and it was done by the Company and not by me, and I have said that I did not take independent counsel's opinion.

Q. Do you know on whose instigation the advice was sought?

A. It arose out of the proposed new issue of shares.

Q. And was there conversation with respect to this for the new issue of shares that you participated in?

A. It was discussed at several Board meetings.

Mr. BLAIR. May I just say, how is this re-cross? I do not see what subject matter has been referred to in the redirect or the cross of anybody else.

379 Mr. CHERRY. This is cross.

Mr. BLAIR. But you are going back to matters—

Mr. CHERRY. I reserved the right to cross. You remember I suspended tentatively.

Mr. BLAIR. I do not see any possible bearing this has on any of the issues in this litigation.

Mr. CHERRY. Will you repeat the question?

(Reporter reads the question.)

Mr. BLAIR. If counsel would state his purpose, then we would have some basis on which to predicate some instructions to the witness here as to whether or not he could answer this question, or as to whether he should not.

Mr. CHERRY. In the first place, the issue of 100 shares was a subject of original examination. The fact that counsel advised the meeting of shareholders is also a subject of examination. I should like to know what led up to that by way of the proceedings of the Board to which the witness was present. Will you read the last question?

(Reporter read the last question.)

Q. I should like to have those conversations which led up to the request by the Company for advice of counsel for the necessity of stockholders' approval?

A. I do not recollect.

Mr. CHERRY. That concludes my examination, except for the production of documents by the witness within the scope of the subpoena and the ruling of the Court.

Mr. MARKER. This completes the examination.

M. G. ELCOCK.

Sworn to before me this 3d day of May 1946.

PHILIP HART,

Notary Public, N. Y. County.

N. Y. County Clerks No. 62.

Term expires March 30, 1946.

Copy received May 30, 1946, 12:10 p. m. Edwin Foster Blair, Attorney for Scophony, Ltd. By E. H. Sloan.

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Government's Exhibit 1

SCOPHONY LIMITED

Minutes of the 46th Meeting of Directors of the Company held at 49 Park Lane, London, W. 1. on Tuesday the 21st day of October 1941 at 4:30 o'clock in the afternoon.

Present: Sir Maurice Bonham Carter, Chairman; Mr. G. W. Walton, Director; Mr. W. G. Elcock, Alternate Director for Mr.

Oscar Deutsch; Mr. John C. Cowles, Alternate Director for Mr. L. L. Whyte, Acting Secretary.

In attendance: Mr. Charles Collins, by invitation of the Board.

1. The Secretary read the Notice convening the Meeting.
2. The Minutes of the 44th Meeting of Directors having been circulated to all the Directors were passed and it was resolved that such Minutes be signed by the Chairman as a true and correct record.

3. The Secretary reported that on the hearing of the appeal against the Master's decision referred to in the Minutes of the previous Meeting the Judge had upheld the Master's decision and accordingly E. K. Cole Limited were proceeding to issue a writ for the appointment of a Receiver and foreclosure and to serve therewith Notice of Motion for hearing on Tuesday next. The Secretary, as representative of the Company's Solicitors, advised the Board that the Receiver would not have power of sale immediately on his appointment but the Board being greatly concerned and taking the view that the appointment of a Receiver would prejudice the Company's position generally and in particular the prospect of obtaining further orders from Ministries, an offer received from Mr. W. G. Elcock to provide finance urgently required by the Company, which offer would enable the Company to redeem the Mortgage and General Charge constituting the security of E. K. Cole Ltd. and provide the Company with further capital it was resolved to accept Mr. Elcock's offer and to enable the Company to carry the same into effect, the following further resolutions were passed:

1. Resolved that the Company do sell certain plant, machinery, tools, furniture and fittings to Mr. William George Elcock for the price of £10,000 and that a pro forma invoice with detailed specification be prepared in this connection forthwith. Mr. Elcock declared his interest as Purchaser and refrained from voting.

2. Resolved that the Company do borrow from Mr. William George Elcock the sum of £10,000 (and such further moneys as the Company may require from time to time up to a maximum of £20,000) such sum of £10,000 to be utilised by the Company (with other monies) for the redemption by Transfer to Mr. Elcock of the existing Mortgage and General Charge held by E. K. Cole Limited and so that the said Mortgage and General Charge should be a continuing security to Mr. Elcock for the said sum of £10,000 and interest thereon at 5% per annum and further that the Company should assign its U. S. A. Patents and other monopoly rights to Mr. Elcock by way of further security. Mr. Elcock declared his interest as lender and refrained from voting.

3. Resolved that the Company do enter into a Management Agreement with William George Elcock (hereinafter called "the

Manager") whereby the Manager would undertake to manage the Company's manufacturing activities in connection with defence Contracts and sub-contracts for a term commencing from the date

of the making of the loan by Mr. Elcock and expiring
 382 two years after the repayment of such loan at a remuneration calculated on the Company's annual trading turn-over (on the base of money received exclusive of bad debts and after deducting discounts) in respect of trading years from the 1st April to the 31st March according to the following scale:

First £50,000	-----	2½ per cent
Next £25,000	-----	5 per cent
Over £75,000	-----	7½ per cent

and that the said Agreement shall be in a form to be mutually agreed between the Company and the Manager and shall appoint one nominee of the Company and one nominee of the Manager from time to time to be joint advisers the first joint advisers to be Sir Maurice Bonham Carter (for the Company) and Mr. Charles Collins (for the Manager). Mr. Elcock declared his interest as Manager and refrained from voting.

4. Resolved that in consideration of the loan and further advances agreed to be made by Mr. Elcock to the Company, the Company do (subject to Mr. Elcock advancing a further £10,000 to the Company) assign to Mr. Elcock beneficially 50% of the Company's patent and other monopoly rights in the United States of America, Canada, and Central and South America. Mr. Elcock declared his interest as the recipient of the foregoing interest and refrained from voting.

5. Resolved that the Company do hire such plant machinery, tools, furniture, and fittings as may be required from Mr. Elcock at an annual rent of £500 the Company making all necessary repairs and replacements and upon terms that the Company is granted an option to purchase the same during a period to commence from the date of the hiring and ending of the expiration of three clear calendar months after the cessation of hostilities in the present war at the price of £10,000. Mr. Elcock declared his interest as the Hirer and refrained from voting.

6. Resolved that a commission of 5 per cent on all moneys provided by Mr. Elcock by way of loan or purchase of plant etc. be paid by the Company. Mr. Elcock declared his interest as the recipient of such commission (or some part thereof) and refrained from voting.

4. The Board considered the position with regard to the liabilities of the Company in the United States of America and in view of the arrangements made with Mr. Elcock which would provide the Company with sufficient funds to meet such commitments it was resolved that the necessary application to the Bank of England be made forthwith:

SCOPHONY LIMITED

Directors' Report and Statement of Accounts, 31st March, 1945

Notice is hereby given that the Ninth Ordinary General Meeting of the Members of Scophony Limited, will be held at 68, Great Cumberland Place, London, W. 1, on Friday the 15th day of March, 1946, at 2:30 o'clock in the afternoon for the following purposes:

ORDINARY BUSINESS

1. To receive and consider the Directors' Report and Statement of Accounts for the year ended 31st March, 1945, and the Auditor's Report thereon.
2. To consider, and if thought fit, re-appoint Mr. Gustav Wikenhauser as a Director and also consider the rotation of Directors.
3. To re-appoint the Auditors for the ensuing year.
4. To transact any other ordinary business of a General Meeting.

SPECIAL BUSINESS

To consider and if thought fit pass the following as Ordinary Resolutions:

(1) That the Resolution passed at the 55th Meeting of Directors held on the 25th day of February, 1943, as follows, namely:

"6. It was resolved: that the 100 "A" Ordinary Shares of 5/- each in the capital of the Company be allotted to William George Elcock as fully paid Shares at par AND IT WAS FURTHER RESOLVED that Certificates of Title in favour of Mr. Elcock be sealed by the Company in due form and issued to him. This was done," be ratified and confirmed.

(2) That an Agreement between the Company and William George Elcock dated the 19th day of December 1942, whereby Mr. Elcock was granted an option during the term of ten years from the 27th day of October 1941 of taking up (as and when issued) at par up to ten per cent of the Ordinary Shares in the then unissued or in any increased capital of the Company (subject to the provisions and stipulations contained in the Agreement) be ratified and confirmed.

The said Agreement is open to the inspection of any Member of the Company between the hours of 9:30 a. m. and 5:30 p. m. at the offices of the Company's Solicitors, Fletcher & Co., Newnham House, 13, Bloomsbury Square, London, W. C. 1, between the 8th day of March 1946 and the 14th day of March 1946 and will be produced at the Meeting.

(3) That 179,910 of the unissued shares of 5/- each in the capital of the Company be offered in the first instance to the existing shareholders of the Company for cash at par payable in full on application such offer to be in proportion to the number of the shares held by them respectively and so that any shares not applied for and any shares which would have to be split into fractions were allotment to take place strictly in proportion to the shares held by the existing shareholders be allotted by the Directors at their discretion and that 19,990 of the unissued shares of 5/- each in the capital of the Company be offered to Mr. Elcock for cash at par payable in full on application pursuant to the said Agreement dated the 19th day of December, 1942.

Dated this 7th day of March 1946.

By Order of the Board.

ALBERT FLETCHER, *Secretary.*

36 Victoria Street, London, S. W. 1.

The Transfer Books will be closed from 5th March 1946 until 18th March 1946, inclusive.

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SCOPHONY LIMITED

Directors: Sir Maurice Bonham Carter, K. C. B., K. C. V. O., Chairman (British); G. W. Walton (British); Arthur Levey (U. S. A.); C. Collins (British); W. G. Elcock (British); G. Wickenhauser (British), (formerly Hungarian).

Auditors: Brown, Fleming & Murray, 4b, Frederick's Place, London, E. C. 2.

Registered Office: 36 Victoria Street, London, S. W. 1.

DIRECTORS' REPORT.

The Directors present the Profit and Loss Account for the year ended 31st March, 1945, and Balance Sheet as at that date.

The profit on trading for the year including transfer fees) amounted to £16,948 17s. 4d., as compared with £14,665 4s. 7d. for the previous year. After deducting Financial Controller's charges, Directors' fees, and a reserve of £4,000 for contingencies, there is a balance of £9,347 17s. 4d., which with £78 5s. 2d. brought forward from the previous year, in all £9,426 2s. 6d., your Directors recommend be carried forward.

The attention of the shareholders is directed to the items of Special Business in the notice convening the Annual General Meeting and to the remarks of the Chairman in regard thereto as set out in the print of his proposed statement circulated with this report.

Mr. Gustav Wikkenhauser (an additional Director appointed during the year) retires from Office pursuant to Article 77 of the Company's Articles of Association and the Directors recommend his reelection. Mr. Wikkenhauser has been in the service of the Company for thirteen years and throughout the War has acted as General Manager of the Company.

Mr. Arthur Levey is the Director due to retire by rotation at this Meeting and owing to his continued absence in the U. S. A. the Directors do not propose his reelection.

The auditors, Messrs. Brown, Fleming & Murray, retire and offer themselves for reappointment.

Dated this 5th day of March 1946.

MAURICE BONHAM CARTER, *Chairman.*

SCOPHONY LIMITED

Balance Sheet as at 31st March, 1945

LIABILITIES

Share Capital:

Authorized:

	£	s.	d.
1,000,000 Shares of 5/- each	499,975	0	0
100 "A" Shares of 5/- each	25	0	0
	<u>£500,000</u>	<u>0</u>	<u>0</u>

Issued:

840,000 Shares of 5/- each, fully paid

100 "A" Shares of 5/- each, fully paid

£	s.	d.
210,000	0	0
25	0	0

NOTE.—As explained in the Chairman's statement to the Ninth Annual General Meeting (to be held on the 15th day of March, 1946, as part of the arrangements made with Mr. Elcock, an option was granted to him in the event of the Company issuing further Ordinary Shares to subscribe for 10 per cent. of such issue at par by an Agreement dated 19th December, 1942.

210,025	0	0
---------	---	---

Profit and Loss Account:

Balance at 31st March, 1944

Add Profit for year as per Account

78	5	2
9,347	17	4
9,426	2	6

219,451	2	6
---------	---	---

Loan: Secured by Floating Charge on all the Company's Assets

22,000	0	0
--------	---	---

Bank Overdraft: Secured by Prior Lien Debenture on all the Company's Assets

5,687	4	1
-------	---	---

Reserve for Contingencies

10,000	0	0
--------	---	---

Creditors and Provision for Liabilities:

Trade and Outstanding Expenses

26,521	4	0
--------	---	---

Loans

6,894	11	10
-------	----	----

33,415	15	10
--------	----	----

<u>£200,554</u>	<u>2</u>	<u>5</u>
-----------------	----------	----------

ASSETS

Patents and Trade-Marks, Equipment and Development Expenditure, including Goodwill, at Cost, less amounts written off and amount received for exploitation of Scophony system in U. S. A. repayable out of proceeds therefrom:

As at 31st March, 1944	218,852 15 8
Additional Expenditure during the year.	
less Sales etc.	2,690 16 1
	221,543 11 9
Less Depreciation of plant and machinery etc.	3,000 0 0
	218,543 11 9

Investments in Subsidiary Company:

Shares in Scophony Electronics Limited, at Cost	2 0 0
Advances to Scophony Electronics, Ltd.	11,793 13 3
	11,795 13 3

Trade Investments: 625 "A" shares at \$1 each fully paid in Scophony Corporation of America	156 5 0
	11,951 18 3

Current Assets:

Work in Progress as valued by the Company's Officials	26,078 4 6
Stocks and stores as valued by the Company's Officials	12,118 14 3
Debtors Deposits and Payments in advance	21,438 16 3
Cash	422 17 5
	60,058 12 5
	£290,554 2 5

MAURICE BONHAM CARTER,
CHARLES COLLINS,
Directors.

AUDITOR'S REPORT

We have examined the Books and Accounts of Scophony Limited for the year ended 31st March, 1945, and have to report that we have obtained all the information and explanations we have required.

We certify that, in our opinion, the above Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs at 31st March, 1945, according to the best of our information and the explanations given to us and as shown by the Books of the Company.

BROWN, FLEMING & MURRAY,
Chartered Accountants, Auditors.

5th March, 1946.

Profit and Loss Account for the year ended 31st March, 1945

	£	s.	d.
To financial Controller's Charges in accordance with agreement	2,750	0	0
To Provision for Directors' fees	850	0	0
To Shares in Scophony G. m. b. H. Berlin, written off	1	0	0
To Reserve for contingencies	4,000	0	0
To Profit for year carried to Balance Sheet	9,347	17	4
	16,948	17	4
By Profit on Trading after charging Administration Expenses and Depreciation	16,870	14	10
By Transfer Fees	78	2	6
	£16,948	17	4

DECLARATION PURSUANT TO SECTION 126 OF THE COMPANIES ACT, 1929

The Subsidiary Company made a small profit during the year, which has not been included in these Accounts.

MAURICE BONHAM CARTER,

CHARLES COLLINS,

Directors.

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Government's Exhibit 3

SCOPHONY LIMITED

CHAIRMAN'S SPEECH

For the Ninth Ordinary General Meeting

The following is a copy of a report which the Chairman will make to the Ninth Ordinary General Meeting to be held at 68, Great Cumberland Place, London, W. 1, on Friday, the 15th day of March 1946. If the shareholders present so desire, the Report will be taken as read. Any shareholder wishing to ask questions is invited to send them to the Chairman, who (if they have not previously been answered by letter) will deal with them in moving the adoption of the Accounts.

The Directors' Report and the Accounts for the year ending 31st March, 1945, are now in your hands. The financial result of the year's working is, I think, satisfactory.

We have in our organisation a highly scientific staff whose thoughts and energies during the whole of the war period have been called upon to solve many of the difficult problems necessary for the development of Radar and other scientific instruments and has enabled our Company to make a number of valuable contributions to the placing of this country in a leading position in Radio-

location. In this connection it was our "Skiatron" which made possible the development of an instrument which enabled our night fighters to track the German raiders. Over 60 percent of our output during the war period has been in the production of Radar instruments based on our pre-war television methods and the work was so important that for security reasons we were called upon to leave London and take a factory at Wells.

Work for war and other Government purposes is now falling off, and shareholders will like to know our future prospects. Your Board are confident that our staff will be just as efficient in meeting post-war trade requirements as they were in overcoming the many difficult problems attached to the war effort.

Whilst the position in regard to television is at the moment still rather obscure and will remain so until the Government finally formulates its plans, we are concentrating on current developments and improvements in the Scophony system and shall be ready to proceed with manufacture when the time is ripe. In the meantime, there are other products to engage our energies. There is our Stroboscope—in our opinion the finest product of its kind available. It is an instrument which shows in slow motion fast moving objects. It enables the speed of rotating or reciprocating mechanisms to be measured and discloses any defects or adjustments necessary in the mechanisms or in the products during the course of manufacture.

We have developed a high speed camera capable of taking 10,000 pictures per second—a most useful camera for scientific and technical investigations.

Then we have our electrically driven high speed gyroscopes for aircraft and marine use, and gyroscopically controlled instruments of all types for navigation equipment. We have also developed an automatic type-setting instrument which will produce artistic spacing of letters without the use of a skilled artist. Whilst this was developed for ordnance survey purposes, we are satisfied that its use can be extended to other fields.

We rate highly the possibilities offered by the "Skiatron" for use in fields other than Radar and television.

During the war we manufactured thousands of high speed high cycle electric induction motors, mainly for aircraft use. We anticipate a demand for these motors for special industrial purposes as they show great advantages as regards reliability, saving of weight and space, compared with those now in general use.

We also designed and manufactured optical instruments of specialised types for war purposes, and we anticipate that a number will eventually be available for manufacture for industrial and technical purposes.

You will note from what I have said the wide range of our activities. We specialise in the design and manufacture of apparatus involving mechanical, optical, electrical and electronic features or a combination of any of these. We have recently been asked by a number of manufacturing concerns to solve some of their 386 problems. We welcome such invitations as it is our great desire, particularly at this time of change-over from war to peace-time production, that our specialised knowledge should be fully utilised.

As has been reported in the Press, proceedings have been instituted by the Federal Authorities of the United States, complaining that the Agreements for the license of our American patents offend the anti-trust Laws.

These Agreements were drafted in the United States by the legal advisers of the participants, and we certainly had no desire to impose limiting conditions other than those usually embodied in patent Agreements.

The case is now sub judice and we are unable to anticipate the decision of the Court.

We have placed on the Agenda and desire you to accept two resolutions formally conforming conditions of the Agreement negotiated between Mr. Elcock and the Company under which he provided in 1941 the moneys required to meet the Company's obligations and necessary working capital.

It was wholly due to the help provided by Mr. Elcock that the Company survived the great difficulties which then threatened its dissolution, and has been enabled to carry on through the war to the present day. The two resolutions embody essential parts of the Agreement which was properly negotiated by the Board, and has secured great advantages for the Company. The reason why your confirmation is now sought needs explanation. In my speech at the Annual General Meeting of shareholders on the 10th December 1942, I stated that under the Agreement the 100 "A" Shares would be allotted to Mr. Elcock. At the first Board Meeting thereafter, namely, on 25th February 1943, the resolution allotting the "A" Shares to Mr. Elcock was passed. Owing to the resignation of the three Directors (shortly after the Annual General Meeting) and the absence of Mr. Levey in America, only four Directors were present, Messrs. Elcock, Collins, Walton and myself, of whom Mr. Elcock was treated as an interested party. We have now been advised that Mr. Collins, though having no interest in the allotment, must also be considered as interested, having been appointed by Mr. Elcock under his powers as Financial Controller a member of the Management Committee.

As a quorum of three is required for a decision of the Board, we are asking that shareholders should formally confirm the allotment.

The second resolution confirms a further condition of the Agreement negotiated with Mr. Elcock, the object of which is to secure that in the event of an issue of additional capital during the period of his Agreement (ten years from 22nd October 1941) he should be enabled to maintain by further subscription at par his share of the equity at 10%.

The relevant Agreement was signed under seal by myself and the Secretary of the Company on 19th December 1942; by an oversight it was not minuted and therefore did not come to the notice of the Auditors. We are advised that this Agreement also requires confirmation by the shareholders. In view of the advantages gained by the Company, I rely on the shareholders to give me their support and approve the required resolutions. I greatly regret the oversight for which I must accept responsibility, and can only ask for the indulgence of shareholders in this matter.

We are also asking your approval to the issue at par of 199,900 Ordinary Shares of 5s. (£49,975). The issue will not be underwritten and will be offered as to 179,910 to shareholders (including "A" shareholders) and as to 19,990 to Mr. Elcock under his Option Agreement. The proceeds will be used in paying off the Bank overdraft, Mr. Elcock's loan (secured by a floating charge on all the Company's assets) now amounting to £22,000 loans from the Directors and others as follows, namely:—Sir Maurice Bonham Carter £2,010 10s. 0d., Mr. Collins £600, Mr. Elcock £1,469 19s. 3d. (assigned to O. T. Falk & Co. Ltd. £1,169 19s. 3d.), Mr. Walton £264 2s. 7d., Mr. Levey £300, Mr. L. Berman £450, the Executors of the late Oscar Deutsch £1,250 (assigned to O. T. Falk & Co. Ltd.), making a total of £6,344 11s. 10d., and to provide additional working capital for the general purposes of the Company including some expansion of its activities.

In order to strengthen the technical side of the Board, we have appointed our Chief Engineer, Mr. G. Wikkenhauser, who has acted as General Manager throughout the war, an additional Director of the Company. He retires from office at this meeting and we recommend his reelection.

Mr. Arthur Levey is due to retire from the Board by rotation and in view of his absence in the U. S. A. he is not proposed for reelection.

I am glad to have the opportunity of expressing on behalf of the Board our sincere thanks to Mr. Wikkenhauser, and all his colleagues, for their skill and for the whole-hearted service they have given to the Company during the year under review.

A Power of Attorney created the 14th day of March One Thousand Nine Hundred and Forty Six by Scophony Limited a Company incorporated and registered in the United Kingdom under the Companies Act 1929 and having its Registered Office at 36 Victoria Street in the County of London (hereinafter called "the Company").

Whereas the Company is interested in certain inventions and United States, Canadian and Argentine patents and the owner of certain television apparatus and of certain shares of Scophony Corporation of America, and whereas the Company is desirous of appointing William George Elcock of 64 Park Street in the County of London, Gentleman (hereinafter called the Attorney) to be the lawful attorney of and to act for the Company in the United States of America and bind the Company in all or any matters affecting the Company's interests in the United States of America, Now this deed witnesseth: That the Company appoints the Attorney to be the true and lawful Attorney of the Company and in the name of the Company or otherwise to do and execute the following acts and things or either of them namely:

1. To commence and prosecute all suits, actions and proceedings necessary to conserve or protect the interests of the Company in the United States of America and to appear in and defend any actions or proceedings brought against the Company and to proceed to judgment and execution or become nonsuit or suffer judgment to go by default or to compromise any such proceedings and in particular the action or proceedings now pending in the District Court of the United States for the Southern District of New York between the United States of America Plaintiff and Scophony Corporation of America; General Precision Equipment Corporation; Television Productions Incorporated; Paramount Pictures Incorporated; the Company Arthur Levey; Earle G Hines and Paul Raibourn, Defendants under the Sherman Anti-Trust Act.

2. To receive and give receipts for moneys due to the Company to adjust and settle all accounts relating to the Company to compound debts due to the Company and to submit to arbitration any dispute directly or indirectly affecting the Company.

3. To execute and deliver all deeds and other documents necessary for the purposes of this deed or any of them or for the management and development of the business of the Company.

4. To engage suspend and dismiss sub-agents and other servants and employ accountants brokers lawyers notaries and other agents as may be required for effectually carrying on the business

of the Company in the United States of America and for doing all or any of the acts and things which the Attorney is hereby empowered to do.

5. To borrow money upon the security of the whole or any part of the assets of the Company in the United States of America.

6. To register or file or cause to be registered or filed
389 in any official registry or any Court in the United States of America or with or by any body politic corporation or company or person this power of attorney and all deeds notices memorials contracts instruments or documents which it may be necessary or expedient to register or file.

7. To do all other acts and things which may be necessary to be done for rendering this power of attorney valid and effectual to all intents and purposes according to the laws and customs of the United States of America.

8. From time to time if and when the Attorney may think expedient to sell and absolutely dispose of all and singular the property and rights hereinbefore mentioned or referred to and all other real and personal estate immoveable and moveable property (if any) belonging to the Company and situate in the United States of America in such manner and upon such conditions as the Attorney shall think fit and to arrange and settle the terms of sale and the price of consideration and also to arrange when and where the respective sales shall be completed and when the property or the respective parts thereof shall be conveyed or assured or possession thereof delivered to the purchaser or purchasers and either with or without a power of rescission.

9. Generally to represent the Company in the United States of America in all matters in any way affecting or pertaining to the Company whether specifically mentioned in this deed or not
390 as fully absolutely and effectually as if the Company were itself present.

And the Company hereby agrees and undertakes at all times to ratify whatsoever the Attorney or his sub-agents shall lawfully do or cause to be done in the premises by virtue of this power of attorney and hereby declares that the same shall be irrevocable for one year from the date hereof.

In witness whereof the Company has caused its Common Seal to be hereunto affixed the day and year first above written.

The Common Seal of Scophony Limited was hereunto affixed in the presence of:

MAURICE BONHAM CARTER,
Director.

ALBERT FLETCHER,
Secretary.

391 GREAT BRITAIN AND IRELAND, LONDON, ENGLAND.

*Consulate General of the United States of America
Embassy, ss:*

I, J. J. Coyle, Vice Consul of the United States of America residing at London, England, do hereby make known and certify to all whom it may concern that on the day and date hereof before me personally appeared Maurice Bonham Carter, Director, and Albert Fletcher, Secretary of Scopphony Limited, by me personally known and known to me to be the respective persons of that name, who acknowledged to me that they were the officers of the said Company, who for and in the name of the said Company have executed the foregoing Power of Attorney; they then and there severally acknowledged the same to be their respective free act and deed as same as the act and deed of the said Company for the uses and purposes therein specified and set forth. I further certify that the Seal affixed to the said instrument is the Seal of said Company and that said Seal was affixed in my presence.

In witness whereof I have hereunto set my hand and Official Seal at London, England, this 14th day of March 1946.

[SEAL]

J. J. Coyle,
J. J. COYLE,*Vice Consul of the United States of America at London,
England.*

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Government's Exhibit 5

1945 MAR. 24 P.M. '148

B 454 PL London 128 1/46 24.

NLT ROBERT BOOTHBY,

Care Scopphony 527 Fifth Ave., NYK.

Serious controversy has developed in affairs Scopphony Corporation of America, 527 Fifth Avenue, New York, between President Arthur Levey and other directors including Hines of General Theatres Equipment and Raibourn of Paramount Stop We desire in every way assist Levey who is director and representative British Parent Company whose television processes may be of high national importance Stop Shall be deeply grateful if you can investigate situation and after obtaining all information from Levey and other side give us benefit your appraisal and advice how best overcome present difficulties Stop Barrow Wade Guthrie Accountants, 120 Broadway can also be of great assistance Stop Maurice Bonham Carter chairman of British Scopphony Company backs this request wholeheartedly.

GEORGE ELCOCK,
23 Culross Street, W 1.

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*Government's Exhibit 6***FLETCHER & Co.****SOLICITORS**

Our Ref: AF/N/567.

NEWNHAM HOUSE,**13 Bloomsbury Square, LONDON, W. C. 1.****27th March 1945.***Scophony Limited*

DEAR MR. LEVEY: On instructions of the Board of Directors of Scophony Limited, given with the full approval and authority of Mr. William George Elcock, we enclose herewith a Power of Attorney by the Company in your favour, which has been duly certified by the United States Consul in London, authorizing you to vote on behalf of the Company in respect of its 625 "A" shares in Scophony Corporation of America at any ordinary or extraordinary General Meeting which may be held in the near future.

You will observe that the Power has expressly been made irrevocable up to and including the 30th day of September 1945.

We have today cabled you as follows: "Scophony Limited executed yesterday power of attorney authorising you vote their 625 A shares Stop Originally duly authenticated American Consul despatched airmail today."

Yours faithfully,

(Signed) **FLETCHER & Co.****A. LEVEY, Esq.***Scophony Corporation of America,**527 Fifth Avenue, New York City, N. Y.*

Encs.

By air mail.

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*Government's Exhibit 7***NLT DECEMBER 1, 1944.****SIR MAURICE BONHAM CARTER,***Chairman, Scophony, Ltd.,**40 Gloucester Square W., London.*

We consider it of the utmost importance that you be kept fully and currently informed of developments here so that you can assist and fully understand decisions made by the SCA board. Stop Several matters are at present under discussion that might conceivably expand the scope of SCA. Stop Several alternative plans being considered and in order to make sure your interest adequately protected at all times we strongly recommend you en-

gage impartial counsel in New York with whom we and other board members can consult and to whom we can report current developments and problems for submission to you. Stop Our first choice for such counsel to represent you would be Davis Polk whom you originally retained or we will be glad to discuss with any other counsel you may suggest on recommendation of your solicitors in London we consider this matter of vital importance your interest urge you act without delay. Stop Scophony Corporation general counsel approves suggestion contained this cable.

ARTHUR LEVEY.
JOSEPH SWAN.
FRANKLIN FIELD.

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Government's Exhibit 8

1944 DEC. 9, P. M. 12 40.

Received at NBM24 Intl, Via M. H., London 79 Dec. 8.

NLT ARTHUR LEVEY.

527 Fifth Ave., N. Y. K.

Board considered your cables first and third December recommending appointment counsel. Stop Employment funds for this purpose would require approval authorities. Stop Even if approval obtained board disinclined make such appointment as feel you as director can represent British company and can consult us on any point of doubt. Stop Not convinced that counsel unacquainted with all conditions would add to our protection except on purely legal matters please inform Augstein.

BONHAM CARTER, 527 Levey.

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Government's Exhibit 9

SCOPHONY LIMITED

Directors: Sir Maurice Bonham Carter, K. C. B., K. C. V. O. Chairman; G. W. Walton; Arthur Levey, U. S. A.; C. Collins; W. G. Elcock.

Auditors: Brown, Fleming & Murray, 4b, Frederick Place, London, E. C. 2.

Registered Office: Tregantle, Milton Lane, Wells, Somerset.

DIRECTORS' REPORT

The Directors present the Profit and Loss Account for the year ended 31st March 1943, and Balance Sheet as at that date.

The profit on Trading for the year (including transfer fees) amounting to £14,900 as compared with £4,979 for the previous

year. After deducting Financial Controllers charges, Directors' Fees, a small loss incurred by Scophony Electronics Limited, and a reserve of £1,000 for contingencies, there is a balance of £10,921 which reduces the loss brought forward from the previous year to £5,869.

The retiring Director is Mr. G. W. Walton, who, being eligible, offers himself for re-election. Mr. W. G. Elcock requires to be re-elected pursuant to the provisions of Article 94.

The Auditors, Messrs Brown, Fleming & Murray, retire and offer themselves for re-appointment.

By Order of the Board.

ALBERT FLETCHER, *Secretary.*

NOTICE OF MEETING

Notice is hereby given that the Seventh Ordinary General Meeting of the Members of Scophony, Limited will be held at Grosvenor Hotel, Victoria, London, S. W. 1, on Monday, the Twentieth day of December 1943, at 12 o'clock noon for the following purposes:

1. To receive and consider the Directors' Report and Statement of Accounts for the year ending 31st March, 1943, and the Auditors' Report thereon.

2. To re-elect retiring Directors.

3. To re-appoint the Auditors for the ensuing year.

4. To transact any other ordinary business of a General Meeting.

Dated this 7th day of December 1943.

By Order of the Board.

ALBERT FLETCHER, *Secretary.*

TREGANTLE,
MILTON LANE,
WELLS, SOMERSET.

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SCOPHONY LIMITED

Balance Sheet as at 31st March, 1943

		LIABILITIES	
Share Capital:			
Authorized:		£	s. d.
1,999,900 Shares of 5/- each	-----	499,975	0 0
100 "A" Shares of 5/- each	-----	25	0 0
		<u>£500,000.</u>	<u>0 0</u>
Issued:		£	s. d.
840,000 Shares of 5/- each, fully paid	-----	210,000	0 0
100 "A" Shares of 5/- each, fully paid	-----	25	0 0
		<u>210,025</u>	<u>0 0</u>

250 UNITED STATES VS. SCOPHONY CORP. OF AMERICA ET AL.

Creditors and Provision for Liabilities, including Reserve for Contingencies:

	f	s.	d.	
Trade and Outstanding Expenses	16,060	0	8	
Loans	7,924	12	7	
				£ s. d.
				24,004 13 3
Loan secured by Floating Charges on all the Company's Assets				25,000 0 0
				<u>£250,029 13 3</u>

ASSETS

Patents and Trade Marks, Equipment and Development Expenditure, including Goodwill, at Cost, less amounts written off:

	f	s.	d.
As at 31st March, 1942	239,402	13	8
Additional Expenditure during the year, less Sales, etc.	5,515	3	10
	<u>239,917</u>	<u>17</u>	<u>6</u>

Less:

Amount received for Exploitation of Scophony System in U. S. A. repayable out of proceeds therefrom

Depreciation of Plant and Machinery, etc

	f	s.	d.
	22,500	0	0
	1,500	0	0

24,000 0 0

215,917 17 6

Investments in Subsidiary Companies:

Shares in Scophony Electronics Limited, at Cost

Advances to Scophony Electronics Ltd.

Shares in Scophony G.m.b.H. Berlin, as valued by the Directors

	f	s.	d.
	2	0	0
	11,154	13	1
	1	0	0

11,157 13 1

Work in Progress, as valued by the Company's Officials

Stocks and Stores, as valued by the Company's Officials

Debtors, Deposits and Payments in Advance:

Sundry Debtors

Deposits and Payments in Advance

3,210	17	4
399	2	4

3,600 19 8

Cash at Bankers and in Hand

Profit and Loss Account:

As at 31st March, 1942

Less: Profit for year as per Account

16,790	2	1
10,920	14	9

5,869 7 4

£250,029 13 3

MAURICE BONHAM CARTER,
CHARLES COLLINS,
Directors.

AUDITORS' REPORT

We have examined the Books and Accounts of Scophony Limited for the year ended 31st March 1943, and have to report that we have obtained all the information and explanations we have required.

We certify that, in our opinion, the above Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs at 31st March 1943, according to the best of our information and the explanation given to us and as shown by the Books of the Company.

London, October 18th, 1943.

BROWN, FLEMING & MURRAY,
Chartered Accountants, Auditors.

Profit and Loss Account for the year ended 31st March, 1943

	£	s.	d.
To Financial Controller's Charges in accordance with agreement	2,669	19	3
To Directors' Fees	700	0	0
To Provision for Loss incurred by Subsidiary Company	209	8	0
To Reserve for Contingencies	1,000	0	0
To Profit for year carried to Balance Sheet	10,920	14	9

£15,500 2 0

By Profit on Trading after charging Administration Expenses and Depreciation	14,799	13	6
By Directors' Fees previously charged, now waived	600	0	0
By Transfer Fees	100	8	6

£15,500 2 0

DECLARATION PURSUANT TO SECTION 126 OF THE COMPANIES ACT, 1929

One Subsidiary Company made a loss during the year, which has been provided for in these accounts. No trading has been carried on by the other Subsidiary Company since its incorporation and no accounts have been prepared, all expenses having been paid by the Parent Company and included under Development Expenditure.

MAURICE BONHAM CARTER,
CHARLES COLLINS,
Directors.

By this Power of Attorney Scophony Limited a Company incorporated and registered in the Kingdom of Great Britain and Northern Ireland under the Companies Act 1929 and having its registered office at Tregantle Milton Lane Wells in the County of Somerset (hereinafter called "the Company") being the registered proprietors and beneficial owners of 625 "A" shares of One Dollar each credited as fully paid in Scophony Corporation of America, Do hereby appoint Arthur Levey of 987 Fifth Avenue, New York City, in the United States of America (hereinafter called "the Attorney") to be the true and lawful Attorney of the Company in the name of the Company or otherwise as the laws of the United States of America and/or of any State forming part of the United States of America may require on our behalf to appoint any person or persons to act as our Proxy or Proxies at any General or Extraordinary General Meeting of the shareholders of the above-named Scophony Corporation of America or at any meeting of Directors of the above-named Scophony Corporation of America which may be held on or before the Thirtieth day of September, One thousand nine hundred and forty-five and at which we shall not be present in person or by Proxy appointed under our Common Seal and to vote thereat for all purposes on our behalf as shareholders in respect of the said 625 "A" shares in the said Scophony Corporation of America; and we authorise our said Attorney at his discretion to revoke any appointment made by him under these presents and we hereby undertake to ratify
 401 whatsoever our Attorney shall do or lawfully cause to be done by virtue of this Power of Attorney and we declare that this Power of Attorney shall be operative only up to and including the said Thirtieth day of September, One thousand nine hundred and forty-five.

In witness whereof the Common Seal of Scophony Limited has been hereunto affixed this twenty-sixth day of March, One thousand nine hundred and forty-five.

The Common Seal of Scophony Limited was hereunto affixed in the presence of:

MAURICE BONHAM CARTER,

Director.

ALBERT FLETCHER,

Secretary.

400 CERTIFICATE OF ACKNOWLEDGMENT OF EXECUTION OF
DOCUMENT

GREAT BRITAIN AND NORTHERN IRELAND; LONDON, ENGLAND,
Embassy of the United States of America, ss:

J. J. Coyle, Vice Consul of the United States of America at London, England, further commissioned and qualified, do hereby certify that on this 26th day of March, 1945, before me personally appeared Maurice Bonham-Carter and Albert Fletcher, to me personally known, and known to me to be the individuals described in, whose name we subscribed to, and who executed the annexed instrument, and being informed by me of the contents of said instrument they duly acknowledge to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal the day and year last above written.

[SEAL]

J. J. Coyle,
J. J. COYLE,

Vice Consul of the United States of America.

403 *Government's Exhibit 11*

CABLE FROM SIR MAURICE BONHAM CARTER TO MR. ARTHUR LEVEY,
NEW YORK

27th JUNE 1945.

In answer to your notice to class A and class B stockholders dated May 31st have to inform you on behalf of Scophony Limited that board is unable to agree to participate in proposed loan to the corporation as not satisfied that this offers most satisfactory solution of corporation's difficulty.

MAURICE BONHAM CARTER, *Chairman.*

404 *Government's Exhibit 12*

COPY OF CABLE FROM MR. ARTHUR LEVEY, NEW YORK, TO SIR
MAURICE BONHAM CARTER

3RD. FEBRUARY 1942.

Attorney for receiver secured order returnable Monday February Ninth to show cause why receiver should not be granted leave to sell Scophony's patents and applications at public auction. Have advised Barrow Wade and counsel.

1946 APR. 11, P. M. 3 30.

Received at NBK 125 Intl., N. London via Wu Cables 119/118
1/52/51 11/659P.

L C ELCOCK TOWNHOUSE,
108 East 38th Street; N. Y. K.

Board considered your cable Stop Assume sale of our holding
of A shares for consideration dollars 200,000 would leave unaltered
agreement for payment of five percent royalty to Scophony Lim-
ited subject to any necessary adjustment to meet antitrust
460 position Stop Board would accept this but bear in mind
A shares must first be offered to B shareholders Stop
Boards only fear is possible difficulty in carrying out onerous
conditions of SCA agreement if management in hostile
407 hands Stop Your alternative programme also acceptable
if you find it more negotiable but like you anxious avoid
expensive litigation Stop Your admirable memorandum also
received and we are in complete agreement.

BONHAM CARTER,

40 GLOUCESTER SQUARE, LONDON, W 2,

October 8, 1945.

DEAR MR. AUGSTEIN: I think that you should be informed of the
position of our negotiations regarding Scophony Corporation of
America as a result of Mr. Hines' visit here, and of Mr. Fly's
intervention on our behalf.

I need hardly say that throughout I have been in touch with
Mr. Krafft, and he is in agreement with us and is aware of the
contents of this letter.

First, may I say that I and my Colleagues have always welcomed
our association with General Precision Equipment, Inc., and Tele-
vision Productions Inc., which Mr. Levey was able to bring about.
They are concerns of high standing, both technical and financial,
and they have a direct interest in the development of our business.
Secondly, we have always been of the opinion that the wise course
for S. C. A. is to rely for the research and development of its pro-
cesses on concerns which have existing the required facilities, both
in material and in personnel, and not to attempt to establish its
own research and development organization, owing to the great
expense and delay that this would involve. This being so, it has
always been our hope that proper working arrangements should be
established with GPE and TPI.

As you are aware, Mr. Hines of G. P. E. has recently paid a visit to this Country, and my colleague Mr. Elcock and I have had several meetings with him and also our General Manager, Mr. Wikkenhäuser. As a result we have established very friendly relations with him, and it has become clear that on many sides of our business our interests are alike, and in particular, in the field of high class instrument product on which we have both developed as a result of the war.

It has been understood in our talks with Mr. Hines that negotiations regarding the affairs of S. C. A. are left wholly in Mr. Fly's hands, and this course is in agreement with Mr. Levey's expressed desires and with yours. I have, of course, been in constant touch with Mr. Fly and with my friend and late colleague Commander Arthur Mallet who at our request is collaborating with him. You are no doubt aware of Mr. Fly's views and advice to us, and since the Power of Attorney which we gave to Mr. Levey has now expired, we have now, following Mr. Fly's advice, executed a Power of Attorney in his favour, a copy of which I enclose.

Hans Kraft has executed a similar Power at the same time, and I trust that you and your Son will likewise execute such a Power in order that Mr. Fly may be able to conduct negotiations with the full authority of the "A" shareholders.

I am informing Mr. Levey of the terms of this letter.

Yours sincerely,

MAURICE BONHAM CARTER.

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Government's Exhibit 15

40 GLOUCESTER SQUARE, W 2,
14th December 1944.

OTTO AUGSTEIN, Esq.,

Windsor Hotel, Montreal, Quebec.

DEAR SIR: I have to thank you for your letter of 6th December and for your cable of 4th December. I received a cable from Mr. Levey suggesting the appointment of Counsel to represent us in the pending negotiations with the "B" shareholders, but we suggested that he should continue to represent us as at present, referring back to us any question of doubt which might arise. He has since cabled us that he entirely agrees with this suggestion. I asked him to keep you informed of our reply.

I am much obliged to you for your information about the position on the Board, and trust that Mr. Levey will be successful in overcoming the difficulties which apparently face him in building up a strong position for the Corporation.

Yours faithfully,

(Sgd.) MAURICE BONHAM CARTER.

(Registered air mail)

THE SCOPHONY SYSTEM OF SOUND AND PICTURE COMMUNICATIONS

SCOPHONY, LIMITED

Town Hall Buildings

WELLS—SOMERSET

20th March 1945.

Patent Application No. 3316/45. Improvements in and Relating
to Optical Reflecting Systems for Television Scanning and Like
Purposes

ARTHUR LEVEY, Esq.,

*The Scophony Corporation of America,
527, Fifth Avenue, New York, U. S. A.*

DEAR MR. LEVEY: We are enclosing the Provisional Specification
of the above-named British Patent Specification which was filed
on February 9, 1945.

We shall be glad to hear from you in due course whether, and if
so, where, you intend to file corresponding applications in the
Western Hemisphere.

Yours faithfully,

SCOPHONY, LIMITED,
E. A. Neumann,
E. A. NEUMANN.
Patent Department.

EAN/PW.

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Government's Exhibit 17

THE SCOPHONY SYSTEM OF SOUND AND PICTURE COMMUNICATIONS

SCOPHONY, LIMITED

Town Hall Buildings

WELLS SOMERSET

31st January 1945.

Please reply to works.

British Patent Application No. 9313/44

ARTHUR LEVEY, Esq.,

*The Scophony Corporation of America;
527 Fifth Avenue, New York, U. S. A.*

DEAR MR. LEVEY: We are enclosing copy of the Provisional Specification in the above case in connection with which you sent us an undertaking dated January 10, 1945. You will remember that this case is on the Secret List.

Please let us know at your early convenience whether, and if so, where, you wish to file a corresponding application.

Yours faithfully,

SCOPHONY, LIMITED,
G. WIKKENHAUSER,
G. WIKKENHAUSER,

General Manager & Chief Engineer.

EAN/PW.

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Government's Exhibit 18

Reprinted from

THE FINANCIAL TIMES

LARGEST CIRCULATION OF ANY FINANCIAL JOURNAL IN THE EMPIRE

Tuesday, 6th June, 1939

SCOPHONY, LIMITED

Commercial Stage Reached—Success in Cinema Television Field—
Sir Maurice Bonham-Carter's Review

The fourth ordinary general meeting of Scophony, Ltd., was held yesterday at Thornwod Lodge, Campden Hill, Kensington, W. Sir Maurice Bonham-Carter, K. C. B., K. C. V. Q., the chairman,

who presided, said: Ours is an industry which is developing very rapidly, and within this short period remarkable developments have taken place. There has been marked progress in the response of the public to television as shown by the sales of receivers, the turnover of which is now reaching quite reasonable dimensions for a new industry. A most important development has been the extension of television to cinemas. Beginning with the Boon-Danahar fight in February, arrangements have been made by the B. B. C. which rendered possible the reproduction in cinemas of broadcasts of events of public or sporting interest, such as the Boat Race, the arrival of President Lebrun, the departure of the King and Queen for Canada, the Derby, etc.

SUCCESS OF SCOPHONY CINEMA INSTALLATIONS

The Monseigneur News Theatre, Marble Arch, was the first to be equipped with the Scophony Junior Theatre equipment, and a number of B. B. C. transmissions were most successfully reproduced on this screen. A fortnight ago a Scophony large-screen equipment screen was installed at the Odeon Theatre, Leicester-square, where it was used for the reproduction, for the first time to cinema audiences, of the Derby, followed next day by that of the Armstrong-Roderick fight.

Scophony's performance found considerable praise in the Press, and these displays have given proof of two things. First, it has been shown that cinema television has become a reality opening up an immense field to the industry, and, secondly, striking practical proof has been given of the soundness of Scophony technical principles and the excellence of our equipment.

As a result Scophony, Ltd., have been entrusted with the equipping of a number of Odeon cinemas in the London television area, as well as with the equipping of a number of Monseigneur News Theatres. Inquiries have also been received from independent cinema theatres. The expectation which I have previously expressed that cinema television will provide an important field of commercial revenue is thus nearing realisation.

PROGRESS ON HOME RECEIVERS

We are now approaching the commencement of our manufacturing activities in the field of home receivers. As explained more fully at the last annual meeting, we are able to provide large screen home sets, based on Scophony exclusive methods, as well as the small screen type of receiver, and consequently we hope to find ourselves in a particularly favourable position in this market.

Larger home screens, such as developed by Scophony, offer, in our opinion, more pleasing viewing conditions and permit greater scope for further improvements in transmission and presentation technique.

Considerable strides have been made by the company during the last several months in the development of large screen-sets. The "Two Foot Home Receiver" first publicly shown at last year's Radiolympia has been still further improved, and in addition a receiver giving a picture 18 in by 14 in, for the smaller size living-room, has been evolved. These receivers will be on show at Radiolympia at the end of August of this year.

What provides the basis for my optimism for the future
413 of our company is that for the past four years I have witnessed continuous and indeed amazing progress in the company's laboratories.

SMALL DEVELOPMENT EXPENDITURE

It is an additional reason for optimism that this progress, including the strong patent position which we are enjoying, has been achieved at the cost of a small capital expenditure—I believe I am justified in describing it as unexampled—and with the rather restricted accommodation and facilities which are at present at our disposal. This in itself is a tribute to the excellence of the Scophony methods, to the economic and efficient handling of the company's resources by the managing director, Mr. S. Sagall, and to the ability and devotion of the technical team under him.

COMMERCIAL MAGNITUDE OF NEW INDUSTRY

The magnitude of the television industry in the future with its universal application in the home, in the cinema, and possibly in conjunction with the telephone, is self-evident.

While to-day television is limited to the London area, an early extension of the television service to Birmingham is apparently imminent, and the potential television market will one day be represented by millions of homes which have today radio sets. Similarly, there is a great potential market represented by the 5,000 or so cinemas in Great Britain, of which probably 800 are in the London television area.

The company has reached the stage of transition from purely laboratory developments into the commercial and revenue-earning field, and we have every reason to believe that Scophony will establish itself firmly in the television market.

PROPOSED INCREASE OF CAPITAL

Our present personnel and space facilities are, however, totally inadequate for manufacturing activities, and in order to be able to fulfill the orders for cinema equipment and in order to be able to enter the manufacture and marketing of home receivers, more finance is required. The directors are accordingly now engaged in negotiations for raising more money and as a first step a resolution for the increase of the company's capital from £300,000 to £500,000 will be submitted to you to-day. Mr. S. Sagall, our managing director, is about to pay another visit to the United States in order to follow up in the interests of the company contacts already established.

Our national welfare requires the continual creation of new wealth, and the building up of new industries, which helps to create such wealth, is a service to the nation. We feel that our shareholders, who have had the courage and enterprise to give to this company their support over a number of years, have actually performed a service of no mean national importance, for we have contributed our share to the upbuilding of what may well become one of the most important British industries. We hope to contribute further to the preservation for this country of the world lead established in the television field.

The report and accounts were unanimously adopted and the proposed increase of capital from £300,000 to £500,000 by the creation of 800,000 new shares of 5s each was unanimously approved.

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Government's Exhibit 19.

1942 SEP. 11 P. M. 6 13.

NBS27F 166 London 11 530P.

LC ARTHUR LEVEY,

987 Fifth Ave., N. YK.

Board yesterday ratified agreement subject to Chadbourne confirming that they advise agreement affords Board adequate protection in American Law Stop Have cabled Chadbourne Direct Stop Allocation of class-A stock must be altered to names of trustees for purpose of voting trust but this does not affect Paramount and General nor need delay ratification Stop Suggest registration in names of Chase Bank nominees who should accept instructions from you and me jointly my instructions being given through Chase Bank London Stop No stock will be allocated to Elcock since his claim will be satisfied by cession of shares of Scophony, Limited Stop Elcock insists with approval of Board that the whole stock should be placed in voting trust you and I acting as stated above for this purpose Stop Secondly Czechs

will claim their commission arises before your commission is deducted Stop Have no doubt latter point can be settled amicably between us after discussion with Czechs.

BONHAM CARTER.

01 987.

415

Government's Exhibit 20

1943 JAN. 28, P. M. 10 30.

Received at NBS234 Cable London 55 28/442P.

LC ARTHUR LEVEY,

987 Fifth Ave., N. YK.

After consultation with Elcock and Czech syndicate we agree A shares should be registered in owners names namely 625 shares Scophony, Ltd., 250 Krafft and Augstein jointly 125 your name Stop You should write Scophony, Ltd., agreeing vote with board in accordance our agreement with Czech syndicate.

BONHAM CARTER.

987 625 250 125.

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Government's Exhibit 21

40, GLOUCESTER SQUARE, LONDON, W. 2,

3rd January 1946.

ARTHUR LEVEY, Esq.,

527 Fifth Avenue, New York.

DEAR LEAVEY: I have to thank you for your letter of December 20th, enclosing copy of the complaint filed by the Federal Government against the S. C. A., ourselves and the "A" shareholders. I also have to confirm the receipt of your cable of the 19th December which was answered on behalf of Scophony Limited by the Secretary's cable of the 21st; to which you replied by a cable dated the 25th December.

We are convinced that a separate representation in the Federal action of Scophony Ltd. is a wise course, and we have, as indicated to you, appointed Mr. John K. Sloan (who has been and remains in close touch with Commander Mallet) and we have associated with him the firm of Blair, Polk & Ogden.

The following represents our views as to the policy which should be adopted in relation to this suit and generally: I assume that what the Federal authorities will require is—

(a) That the power of the "B" shareholders to veto licenses to other interests should be modified, and

(b) That allocation of exclusive areas of trading between the "B" shareholders and Scophony Ltd., should also be modified or abandoned.

There appears to be no great difficulty in adjusting the agreements to remedy these points while retaining our cooperation with General Precision Equipment which, as you are aware, we regard of value and should be retained.

I recognise, however, that it may be held that it is impossible to separate the illegal provisions of the agreements and that, therefore, they are as a whole null and void.

We are convinced that it is wrong to establish S. C. A. at the present time as a development or manufacturing Company. This will require a very heavy investment and at best is an extremely difficult and financially precarious business. We are content to leave development of our processes to our own efforts here in cooperation with General Precision Equipment in the U. S. A., which organization you originally chose as our associates, and rightly in our opinion. We must, therefore, ask you to accept our view that

the functions of the Company should not be enlarged to
417 carry on development and production on its own account, but should be rather reduced to that of a patent holding Company drawing its revenues from the exploitation of its patents in the U. S. A. and Canada. It should be readily possible to find agents who would undertake the business of finding a market for our patents and the expenditure of the Company could be reduced to a very small annual figure.

This is the object which we seek to obtain as it is impossible for us to sustain the position of having from time to time to transfer funds from this side to avoid disaster to the American Company.

I am aware that you attach importance to publicity. I must frankly say that we here attach none. The successful production of a single large screen unit will bring all the publicity and all the custom which we need. Moreover, we agree with the Columbia Broadcasting Company on your side, that television still requires a considerable period of development if it is going to meet the public demands and not cause great disappointment. It may be that some other interests have found the solution, of which we are at present unaware, but until that is proved we shall shape our policy on the lines stated.

Finally, I must draw your attention to an amendment of the agreements which in any case must be provided for, and that is the alteration of the definition of "affiliate" to exclude companies directly or indirectly controlling Scophony. Since this may be an insuperable obstacle to our procuring finance from outside.

Yours sincerely,

MAURICE BONHAM CARTER.

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Government's Exhibit 22

(Copy)

JUNE 27/45.

NBM3 Intl., N. London via WU Cables 49 27/117P.

LC ARTHUR LEVEY,

527 Fifth Avenue, New York, (N. Y.)

Fly has recommended replacement at stockholders' meeting July second of Swan and Field by directors who will cooperate with us in representing interests of a shareholders. Stop We accepted recommendation and trust you will carry it out in consultation with Fly.

BONHAM CARTER.

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S. C. A. Exhibit "A"

SCOPHONY LIMITED

CHAIRMAN'S SPEECH

The Reports and Accounts for the two past years are now submitted. There was a loss for the year ending 31st March 1941, but our activities during the following year resulted in a profit of £4,978, which was increased to £8,540 by the Directors waiving their fees which have accrued over a period of years and by certain other credits as shown in the Profit and Loss Account. We consider these results satisfactory as they cover the early stages of our production, and they reflect great credit on the work of our General Manager, Mr. Wikkenhauser, and all those who work with him.

Those who recall the Balance Sheet for the year ending 31st March 1940, will remember that our cash resources were insufficient to carry us over any lean period. In the period under review we were called upon to repay the Debenture debt of £19,000 which was owing by our Company. This we were unable to do immediately from our own resources. We were only able to meet this demand through the assistance of Mr. W. G. Elcock, who took over the Debenture debt and supplied us with further resources to meet certain pressing liabilities and also to provide some working capital. In return for this assistance an agreement has been entered into by the Board with Mr. Elcock as follows:

1. Mr. Elcock is to be appointed the Financial Controller for the purpose of supervising the Company's production business, for a term of 10 years, and for his services Mr. Elcock will receive a percentage of the net profits earned by the Company according to the following scale: On the first £5,000, 20%; on the next £5,000, 15%; on the next £3,000, 10%; with a minimum of £1,000 per trading year.

2. All the 100 A Ordinary Shares referred to in the Resolution set out in the Notice under the heading "Special Business" will be allotted to Mr. Elcock credited as fully paid up.

It is in furtherance of this agreement, which the Board recommend as wholly equitable and in the shareholders' interests, that we ask you to approve the Resolutions on the Agenda of this Meeting.

I am glad to inform you that after very protracted negotiations we have concluded an agreement for the formation of a company in the United States for the exploitation of our patents and processes in the Western Hemisphere. The success of these negotiations is largely due to the persistence and enterprise of our colleague Mr. A. Levey, for which we wish to record our grateful appreciation. The agreement has been made jointly with General Precision Equipment Corporation and with Television Productions Inc., a subsidiary of Paramount Pictures Corporation. The association of our Company with these powerful Corporations is in the highest degree satisfactory, although it is not to be expected that any quick financial return will accrue to our Company.

In order to provide the funds required for this development in the United States, we entered into an agreement under which a sum of £22,500 was provided, repayable out of moneys to be received from the exploitation of our system in the United States. The repayment of this loan is accordingly a first charge on any royalties or dividends which we may receive, and will naturally postpone any cash return to our Company.

Nevertheless we anticipate great advantage will be secured by our co-operation with these companies, which have at their disposal the resources and the personnel necessary to ensure the development of our processes.

Very briefly, the details of the arrangements made in America are as follows:

1. An American Company called "Scophony Corporation of America" has been incorporated in the State of Delaware, having a capital of \$2,000 divided into 1,000 "A" Shares of Common Stock and 1,000 "B" Shares of Common Stock. To this corporation will be assigned all Patents and applications taken out in the Western Hemisphere and in return the whole of the "A" Shares will be ceded to our Company and its associates and Scophony Limited has the right to appoint three directors out of five to the Board of Scophony Corporation of America.

2. There will be a mutual exchange of licences in respect of Improvements between Television Productions Inc. and General Precision Equipment Corporation on the one hand and Scophony Limited on the other, on a royalty basis.

As for our activities here, as is usual I cannot say much. I think we have fully justified our existence by work which is useful

to the national purpose, and no small part of which is of our own design and of value to our own development.

I have already drawn attention to the very meritorious work of our staff, and I wish to end these remarks by recording the sincere thanks of the Board to all of them for their skill and devoted work, which in many cases has involved a considerable measure of self-sacrifice.

10TH DECEMBER 1942.

420 (Clerk's certificate to foregoing transcript omitted in printing.)

421 In the Supreme Court of the United States

Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof

Filed April 15, 1947

1. Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely in its appeal in this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. The entire record in this cause as filed in this Court pursuant to the appellant's praecipe to the Clerk of the United States District Court for the Southern District of New York is necessary for the consideration of the foregoing points and appellant designates said entire record for printing by the Clerk of this Court.

GEORGE T. WASHINGTON,
Acting Solicitor General.

Dated April 14, 1947.

[File endorsement omitted.]

422 Supreme Court of the United States

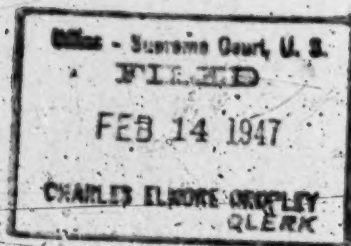
Order noting probable jurisdiction

March 10, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:]. File No. 51894. Southern New York, D. C. U. S. Term No. 1030. The United States of America, Appellant vs. Scophony Corporation of America, General Precision Equipment Corporation, Television Productions, Inc., Paramount Pictures, Inc., Scophony Limited, et al. Filed February 14, 1947. Term No. 1030 O. T. 1946.

FILE COPY



No. 1030

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In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

**SCOPHONY CORPORATION OF AMERICA, GENERAL
PRECISION EQUIPMENT CORPORATION, TELEVISION
PRODUCTIONS, INC., PARAMOUNT PICTURES, INC.,
SCOPHONY LIMITED, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATEMENT AS TO JURISDICTION

**In the District Court of the United States
for the Southern District of New York**

Civil Action No. 34-184

UNITED STATES OF AMERICA, PLAINTIFF

v.

**SCOPHONY CORPORATION OF AMERICA, SCOPHONY
LIMITED, ET AL., DEFENDANTS**

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the final judgment of the District Court entered in this cause in favor of defendant Scophony, Limited, on November 8, 1946. A petition for appeal is presented to the District Court herewith, to wit, on January 6, 1947.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 15 U. S. C. sec. 29),

and Section 238 of the Judicial Code, as amended (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. C., sec. 345).

The judgment dismissing the complaint as to Scopfony, Limited, is the "final decree" of the District Court as to this defendant.

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

United States v. Crescent Amusement Co., 323 U. S. 173.

Missouri-Kansas Pipe Line Co. v. United States, 312 U. S. 502, 505, 508.

STATUTE INVOLVED

Section 12 of the Act of October 15, 1914, 38 Stat. 736, 15 U. S. C. 22, known as the Clayton Act, provides as follows:

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

THE ISSUES AND THE RULING BELOW

This is a civil proceeding brought by the United States under Section 4 of the Sherman Act charging the defendants with conspiring to restrain and monopolize interstate and foreign commerce in

products, processes, patents and inventions useful in television and allied industries. The defendants named in the complaint are Scophony Corporation of America (referred to herein as SCA); Scophony, Limited (referred to herein as Limited); General Precision Equipment Corporation (referred to herein as General); Paramount Pictures, Inc.; Television Productions, Inc. (referred to herein as Productions), a wholly-owned subsidiary of Paramount Pictures, Inc.; Arthur Levey, a director of Limited and one of its representatives in the United States; and two other individual defendants. Limited is a British corporation and the other corporate defendants are American corporations.

Service of process as to Limited was made by delivering to Arthur Levey in New York City a copy of the complaint and a summons directed to Limited. A copy of the complaint and a like summons was also served in New York City upon William George Elcock, who was financial comptroller and a director of Limited. At the time of said service Levey was a resident of New York City and Elcock was traveling in this country in connection, in part, with the interests of Limited.

Following such service Limited appeared specially and moved (1) to dismiss the action as to it upon the ground that the court lacked jurisdiction to entertain a suit against it and (2) to quash the purported service of process on it upon the ground

4

that the service was insufficient to vest the court with jurisdiction over this defendant. Upon the basis of the facts set forth in affidavits filed by the opposing parties, the district court on October 30, 1946, filed an opinion holding that the activities of Limited within the Southern District of New York were not such as to warrant the conclusion that it had subjected itself to the local jurisdiction. On November 8, 1946, the court entered a judgment dismissing the complaint as to Limited and quashing service of process as to it.

The facts before the district court on Limited's motions may be summarized as follows:

Limited is the owner and licensor of inventions purporting to cover television reception and transmission systems. It was manufacturing and marketing in England certain commercial television sets prior to the outbreak of war with Germany in 1939, but these activities terminated with the outbreak of war. In 1940 Limited sent some of its personnel and equipment to this country and during 1940, 1941 and part of 1942 it maintained an office in New York City and engaged in various activities incident to placing its product on the American market. The district court was of the opinion that the character of Limited's business here during this period would well warrant the inference that it had subjected itself to the local jurisdiction and that it was present here by agents upon whom service of process could be made.

Limited found itself handicapped in promoting an American market for its inventions by a shortage of funds and of proper equipment. Accordingly, in July and August of 1942 it entered into agreements with Productions and General pursuant to which a new corporation, SCA, was formed. Limited transferred to SCA all of its equipment and television patents in the United States and received in exchange approximately two-thirds of SCA's class "A" common stock, which stock was entitled to elect three-fifths of SCA's board of directors and its president, vice-president and treasurer. Productions and General purchased for cash all of SCA's class "B" common stock, which controlled the election of the remaining directors and officers of SCA. Productions and General were also granted exclusive licenses under all of SCA's patents. They agreed to pay royalties to SCA on the products produced under these licenses and SCA agreed to transmit 50% of such royalties to Limited.

The agreements provided that Limited would not market any product covered by its inventions in the Western Hemisphere and that Productions and General would not market any such product outside the Western Hemisphere. The agreements also provided for a continuous interchange of patent information between Limited and SCA.

Arthur Levey, who was the prime negotiator for Limited in working out the agreements, be-

came president and a director of SCA. Since SCA's exclusive licensees have not as yet manufactured and sold any products covered by their licenses, SCA has received no royalty income from them other than a stipulated minimum royalty payment. Since the spring of 1943 Levey has sought to obtain for SCA the right to manufacture under its patents or to license other parties thereunder but the "B" directors representing Productions and General have been unwilling to approve such action. In the controversy with the "B" directors Levey was acting on behalf of both SCA and Limited and Limited had authorized him to represent it in negotiating with the two exclusive licensees and with other parties in the United States who might be interested in exploiting the inventions of the SCA patents. Limited also authorized certain other parties to investigate these problems and to assist Levey in his negotiations.

There has been a continuous interchange of information between Limited and SCA relating to patent situations and developments in the United States affecting their inventions. In certain instances SCA has, at the request of Limited, purchased for it certain materials and equipment in the United States and has arranged for shipping them to England.

The district court was of the opinion that although Limited had "major control" over SCA,

the latter had not been an agent carrying on the ordinary business of Limited. The court was also of the opinion that the individuals, particularly Levey, who had represented Limited in the United States, had been engaged in protecting its interest in SCA, with reference to matters which concerned the conduct of the business of SCA and not that of Limited. The court therefore concluded that Limited was not "found" within the local jurisdiction, within the meaning of Section 12 of the Clayton Act, by reason of the acts of SCA or by reason of the activities within the United States of Levey and other individual agents of Limited. The court also held that Section 12 of the Clayton Act has the same application to an alien corporation as to a domestic corporation not resident in the district in which process is served.

THE QUESTIONS ARE SUBSTANTIAL

The appeal presents the question whether Section 12 of the Clayton Act applies to an alien corporation. This question has not heretofore been before this Court and is substantial. Since domestic corporations necessarily can be sued and served with process somewhere in the United States; the effect of Section 12 in respect of such corporations is to facilitate subjecting them to suit and to clarify the question of proper venue and adequate service of process. But an alien corporation is not an "inhabitant" of the United

States and is not necessarily "found" within any judicial district. Accordingly if Section 12 applies to alien corporations and imposes any limitations beyond those of procedural due process, the section in its application to alien corporations is narrowing rather than broadening and it is to be doubted that Congress intended any such result. An additional reason for regarding Section 12 as limited to domestic corporations is that alien corporations, which are not inhabitants of any judicial district, are not within the provisions of the section authorizing suit and service of process in the district of which the corporation is an "inhabitant." Furthermore, if Section 12 applies at all to alien corporations, the appeal presents the question whether the section is to be interpreted in respect of such corporations as setting forth merely the requirements of procedural due process. See *International Shoe Co. v. State of Washington*, 326 U. S. 310.

If this Court should hold that Section 12 has the same application to an alien corporation as to a nonresident domestic corporation, the appeal presents a further question of substance. This question is whether an alien corporation is "found" within the judicial district within the meaning of that section when it utilizes a subsidiary to carry on business in the United States; derives profits from the business of this subsidiary; participates, through agents in the man-

agement and control of this subsidiary; and utilize the subsidiary as a medium for establishing cartel agreements which are in restraint of the interstate and foreign commerce of the United States and which violate the Sherman Act.

The above question is similar to that which is presented in numerous pending proceedings brought by the United States under the Sherman Act questioning the legality of cartel agreements entered into between domestic and alien corporations. In the instant case, as in other like cases, full and effective relief, in the event that the cartel agreements are found to be illegal, cannot be granted unless the defendant alien corporation or corporations can be subjected to the local jurisdiction.

We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted.

✓ GEORGE T. WASHINGTON,
Acting Solicitor General.

JANUARY 6, 1947.

United States District Court, Southern District
of New York

Civ. 34-184

UNITED STATES OF AMERICA, PLAINTIFF

v.

SCOPHONY CORPORATION OF AMERICA; SCOPHONY
LIMITED: ET AL., DEFENDANTS

Appearances: Edwin Foster Blair, Esquire, Attorney for Defendant Scophony, Limited, Appearing specially; Joseph B. Marker, Esquire, Special Attorney, Attorney for United States of America; Simpson, Thacher & Bartlett, Esquires, Attorneys for Defendants Television Production, Inc., Paramount Pictures, and Paul Raibourn; Mudge, Stern, Williams & Tucker, Esquires, Attorneys for Defendants Earl G. Hines and General Precision Equipment Corporation; Joseph O. Ollier, Esquire, Attorney for Defendants Arthur Levey and Scophony Corporation of America.

EDWARD A. CONGER, U. S. D. J.:

The Defendant, Scophony, Limited, moves to quash service of process and dismiss the complaint herein upon the ground that it is a corporation organized under the laws of Great Britain, not subject to the jurisdiction of this Court.

The action is brought pursuant to Section 4 of the Sherman Anti-Trust Act (15 U. S. C. A. § 4) against five corporate defendants, including the

movant, and three individuals to restrain continuing violations of Sections 1 and 2 of the Act (15 U. S. C. A. § 1 and § 2). The complaint charges the defendants with combining and conspiring to monopolize and restrain interstate and foreign trade in products, processes, patents and inventions useful in television and allied industries.

Service of process was effected in New York City on December 20, 1945 by leaving a copy of the summons and complaint with defendant Arthur Levey, who is a Director of Scophony, Limited. On April 5, 1946 one W. G. Elcock, also a Director of Scophony, Limited, was served while visiting this country.

Section 12 of the Clayton Act (15 U. S. C. A. § 22), pursuant to which venue is established and jurisdiction acquired in suits of this type, provides as follows:

Any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found. [Italics added.]

It may be noted that the emphasized portion of the section relating to jurisdiction is concerned here; and the main problem is, therefore, whether the defendant, Scophony, Limited, not being an "inhabitant" of this district, is "found" here.

Although there have been numerous decisions rendered in application of this section, the great majority of them relate to domestic corporations (corporations organized within the United States) rather than alien corporations, as here.

Recently, Judge Leibell of this Court considered the instant problem in a suit analogous to the present one (*U. S. v. U. S. Alkali Export Association, et al.*, decided July 16, 1946), and he held that a British corporation which owned the entire capital stock of an American corporation functioning within the jurisdiction of this Court was "found" here within the meaning of Section 12. He concluded that the activities of the American corporation on behalf of the parent company warranted the finding that the former was merely an "agency subsidiary" of the British company.

In general, a corporation is "found" within a given jurisdiction if it there does business "of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the State or district where service is attempted." *Peoples Tobacco Co. v. American Tobacco Co.*, 246 U. S. 79, 87; *U. S. v. Aluminum Co. of America* (D. C. N. Y., 1937), 20 Fed. Supp. 13; *Haskell v. Aluminum Co. of America* (D. C. Mass., 1926), 14 Fed. (2d) 864. An examination of the cases indicates that the concept expressed as "found" is identical with the more familiar "doing business."

The affidavit submitted by the Government in opposition to this motion contains a detailed statement of the various activities of movant in this jurisdiction. Much of this activity occurred prior to the signing of the so-called "basic agreements" with the other defendants in 1st 2.

Defendant Scophony, Limited (hereinafter referred to as "Limited") has its office in the City of London, England. It is in the business of manufacturing and selling television apparatus and is the owner and licensor of inventions purporting to cover, among other things, television reception and transmission systems.

In the Spring of 1939, Limited manufactured and placed on the market in England several commercial television sets. After the outbreak of the war with Germany in September 1939, the British Broadcasting Corporation stopped the television broadcasts.

In 1940, Limited sent some of its personnel and various television equipment to this country; it maintained an office in New York City from 1940 to 1941; it demonstrated its product here; it leased one of its television sets to a theatre company as a result of which a set was installed in the Rialto Theatre in New York City. In general, Limited was actively engaged in placing its product in the American market, inasmuch as the English market was closed to it because of the war. In those early years, 1940 and 1941, and perhaps for part of 1942, Limited's business here was of

such a character that one might very well infer that it had subjected itself to the local jurisdiction and was present here at that time by its duly authorized agents upon whom service of process could be made.

Unless there was a continuity of such activities down to the present, however, such course of conduct is of no aid in the determination of this motion. What we are interested in is the business conduct of this defendant in this jurisdiction at the time process in this action was served upon it or within a reasonable time before that.

There is no question but that these business activities which I have referred to ceased prior to the time this defendant entered into the "basic agreements."

These agreements were executed on July 31, 1942, and August 11, 1942. In substance, they provided for the creation of a new corporation, the Scophony Corporation of America (hereinafter called "SCA"), to which Limited sold all its equipment within the United States, and all its present and future patents. SCA, in turn, gave exclusive licenses for the manufacture and sale of products under the Scophony inventions in the Western Hemisphere to defendants General Precision Corporation and Television Products, Inc. The exclusive licensees agreed to pay royalties to SCA on all products that they might produce under the Scophony inventions, and SCA agreed to transmit to

Limited fifty percent of all royalties that it received from the licensees.

The capital structure of the new corporation, SCA, was to consist of 1,000 "A" shares and 1,000 "B" shares. The "B" shares were allotted to the American interests, General Precision Equipment Corporation and Television Productions, Inc., a wholly-owned subsidiary of Paramount Pictures, Inc. The "A" shares were allotted to the British interests, principally Limited.

The "A" shares are entitled to elect three-fifths of the Board of Directors of SCA and to elect the President, Vice President, and Treasurer of the new corporation. Since the creation of SCA the representatives of the "A" shares have been elected by Limited.

The "B" shares are entitled to elect two-fifths of the Board of Directors of SCA and also the Secretary and Assistant Secretary.

The Government contends that these agreements provide for the division of world markets in the products covered by the Scophony inventions, particularly those relating to television. Limited retained the Eastern Hemisphere, including England, as its exclusive territory for the manufacture and sale of products covered by Scophony inventions.

The Western Hemisphere, including the United States, became the exclusive territory of SCA or its two exclusive licensees for the manufacture and sale of products under the Scophony inventions.

It is apparent from these provisions that Limited exerted the major control over SCA. Defendant Levy, who is President and a Director of the American Corporation is also a Director of Limited.

However, it is well settled that a parent corporation does not "do business" in a given jurisdiction merely because of the presence there of its subsidiary without some further factual basis for concluding that the parent has injected itself into the jurisdiction by its conduct in relation to the subsidiary, or that the subsidiary is acting solely as an agent, as was the situation in *U. S. v. U. S. Alkali*, *supra*. *Cannon Mfg. Co. v. Cudahy Co.*, 267 U. S. 330; *Consolidated Textile Corp. v. Gregory*, 289 U. S. 85; *Amtorg Trading Corp. v. Standard Oil Co. of Cal.* (D. C., N. Y. 1942), 47 Fed. Supp. 466; *American Fire Prevention Bureau v. Automatic Sprinkler Co. of America* (D. C. N. Y. 1941), 42 Fed. Supp. 220. And there is no evidence, except possibly for the fact that Limited received fifty percent of the royalties earned by SCA, that SCA stood any differently than any ordinary subsidiary corporation, nor is there any indication that it acted merely as an agent for Limited. It is true that SCA did act for Limited in the purchase of certain materials and equipment in the United States, but it appears from the papers that this occurred on occasion, and not as frequent and common practice of SCA.

The Government asserts that Limited is "found" here by reason of the activities of its agents, especially Levey, and others.

Levey was the prime negotiator for Limited of the "basic agreements" to which the Government has directed its attack. He consulted with Limited with respect to the proposed modifications of the "A" stock allocations, and which proposal resulted in the new allocations set forth in the agreement of February 4, 1943, whereby Limited received two-thirds of the "A" shares. He kept Limited advised about the negotiations with regard to the employment by SCA of an inventor, Dr. Rosenthal. He carried out instructions and kept Limited advised in connection with the disputes which subsequently ensued between the "A" and "B" Directors. In order to assist him in resolving these difficulties, Limited gave him a power of attorney, dated March 26, 1945, authorizing him to vote Limited's shares in SCA.

Numerous others were authorized by Limited to act in its behalf in these disputes, including W. G. Elcock, who travelled to this Country for the purpose, James L. Fly and John Sloan, attorneys, Robert Boothby, a British member of Parliament and Commander Arthur Mallet, an English officer.

While a successful settlement of these disputes might inure to the benefit of Limited, still the disputes were concerned with the conduct of the business of SCA and not that of Limited.

Assuming the truth of the allegations in the complaint with respect to Limited's business, i. e. that it is engaged in the manufacturing, selling and licensing of television apparatus, it would seem that none of the activities of Limited's agents were concerned with the ordinary business of Limited. These agents were engaged in protecting the interests of their principal in SCA.

The Government finally argues that the conduct required to hold an alien corporation under Section 12 may vary from that required to hold a foreign corporation. If by this the Government means that there is one rule which applies to alien corporations and another to foreign corporations it is clearly in error. The cases cited by the Government do not support this theory. All of them where pertinent apply the rule as I have heretofore stated it, and make no such distinction, nor do any of the other cases which I have read.

I am not unmindful of the effect of my holding here. However, that cannot determine my judgment. I cannot make the rule to fit the case. I can only apply the rule to the facts and having done so announce the result.

This I have done, and although the result may be unfortunate as far as the Government is concerned, I can only conclude that Limited was not found within the jurisdiction of this Court at the time of service of process, and the motion to

quash the service and dismiss the complaint must be granted.

Submit order on notice.

Dated: October 30, 1946.

EDWARD A. CONGER,
United States District Judge.

Civ. 34-184. United States District Court,
Southern District of New York. United States
of America, Plaintiff, v. Scophony Corporation of
America: Scophony, Limited, et al., Defendants.
Opinion. Edward A. Conger, D. J. U. S. District
Court, S. D. of N. Y. Filed Oct. 30, 1946, 12:20
P. M.

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No. 41

In the Supreme Court of the United States

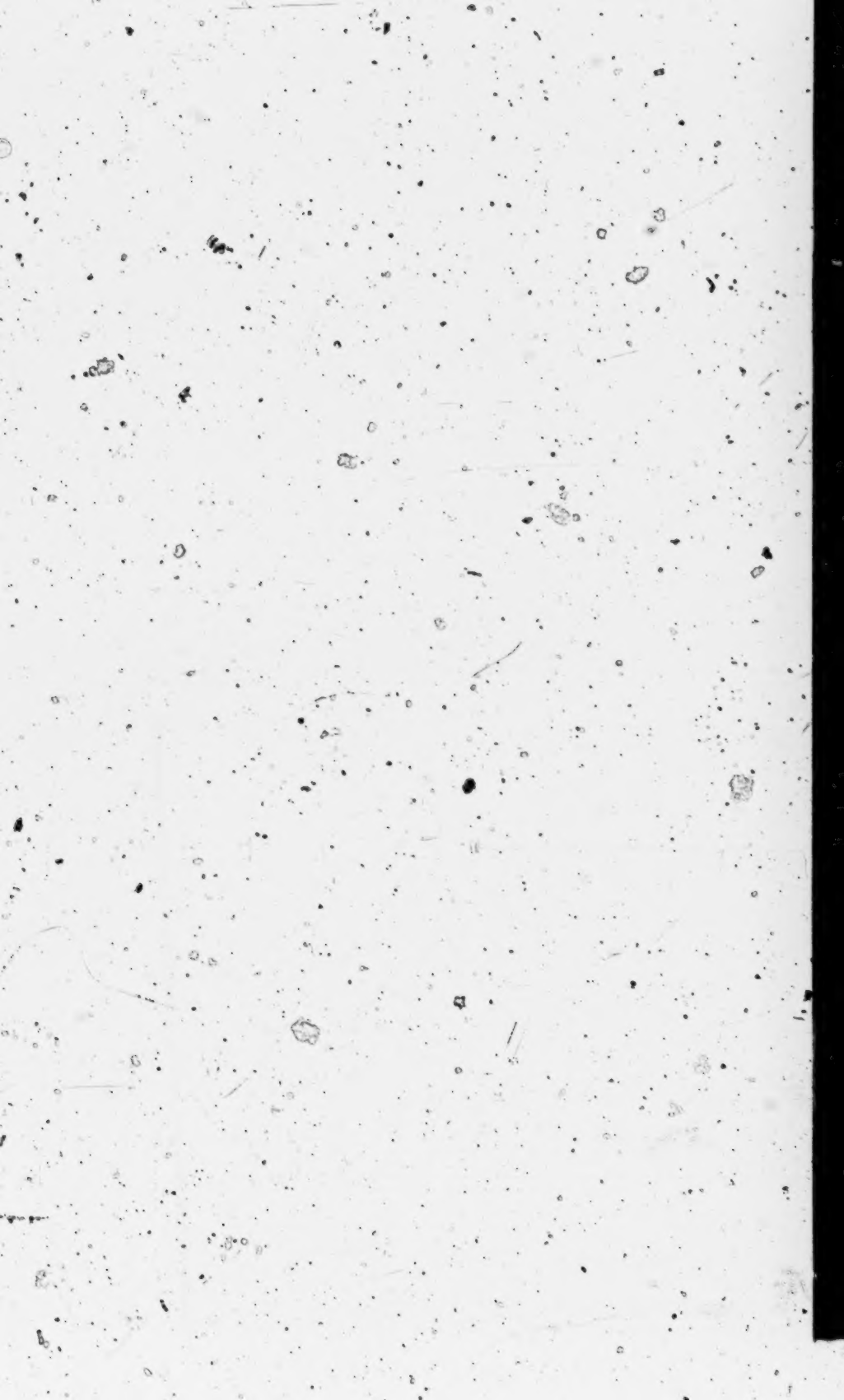
OCTOBER TERM, 1947

THE UNITED STATES OF AMERICA, APPELLANT

SCOPHONY CORPORATION OF AMERICA, GENERAL
PRECISION EQUIPMENT CORPORATION, TELEVISION
PRODUCTIONS, INC., PARAMOUNT PICTURES, INC.,
SCOPHONY LIMITED, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES



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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 41

THE UNITED STATES OF AMERICA, APPELLANT

v.

**SCOPHONY CORPORATION OF AMERICA, GENERAL
PRECISION EQUIPMENT CORPORATION, TELEVISION
PRODUCTIONS, INC., PARAMOUNT PICTURES, INC.,
SCOPHONY LIMITED, ET AL.**

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK**

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 58-63) is reported in 69 F. Supp. 666.

JURISDICTION

The judgment of the district court granting the motion of Scophony, Limited, to dismiss the complaint and to quash service of process as to it was entered on November 8, 1946 (R. 66-67). Petition for appeal was filed and allowed on

January 7, 1947 (R. 67-68). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. 29, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C. 345. Probable jurisdiction was noted on March 10, 1947 (R. 265).

QUESTION PRESENTED

Whether an alien corporation is "found" within a federal judicial district, so that it may be sued and served with process in an antitrust proceeding brought against it in the district, when it (a) has entered into an agreement, violative of the federal antitrust laws, with two American companies doing business in the district, providing for the continuing exploitation of patents and inventions owned by it; (b) has, together with those American companies, formed a domestic corporation, doing business in the district, to license its patents, in which corporation it controls a majority of the directors and officers; and (c) has engaged through its agents (including its representatives on the domestic corporation's board of directors) in promoting the exploitation of its patents and inventions in the district.

STATUTE INVOLVED

Section 12 of the Act of October 15, 1914, 38 Stat. 736, 15 U. S. C. 22, known as the Clayton Act, provides as follows:

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

STATEMENT

This case is here on appeal from an order of the district court entered in a proceeding brought against defendant Scophony, Limited, and others charging violation of Sections 1 and 2 of the Sherman Act. The court dismissed the complaint as to defendant Scophony, Limited, and quashed service of process on it upon the ground that it was not found within the jurisdiction (R. 58-63, 66-67).

Scophony, Limited (herein called "Limited"), is a British corporation organized and existing under the laws of the United Kingdom, with offices and principal place of business in London, England (R. 4). Limited manufactures and sells television apparatus and is the owner and licensor of inventions covering, among other fields, tele-

vision reception and transmission (*ibid.*). Prior to 1939, Limited had obtained control of inventions and patents relating to two novel systems of television transmission and reception, one known as the "supersonic" system and the other as the "skiatron" system (R. 5-6). The present and future patents, patent applications, patent rights, inventions, designs, processes, techniques, technical data and information relating to these two systems are herein referred to as the "Scophony Inventions". Limited has taken out patents on the Scophony Inventions in the United States and other parts of the Western Hemisphere, and also in the Eastern Hemisphere (R. 53, 57, 122, 196, 256).¹

The outbreak of the European war in 1939 made it impossible for Limited to engage in the commercial development, manufacture and sale of television equipment in England (R. 6, 50, 159, 191). Limited accordingly sent personnel to the United States for the purpose of encouraging the exploitation of the Scophony Inventions in this country (R. 50). It also sent television equipment to this country; maintained an office in New York City from 1940 to 1941; demonstrated its

¹ The terms Western Hemisphere and Eastern Hemisphere are used herein in the sense in which Limited and other defendants used them in agreements made with each other, namely, that the continents of North and South America, plus the Philippine Islands, roughly constitute the Western Hemisphere and the rest of the world constitutes the Eastern Hemisphere (R. 20, 31).

equipment there; and leased a television set to a theatre company, as a result of which a set was installed in the Rialto Theatre in New York City (R. 50-51, 60).

On the basis of the foregoing facts, the district court concluded that "Limited was actively engaged in placing its product in the American market," and that its business in 1940 and 1941, and perhaps for part of 1942, "was of such a character that one might very well infer that it had subjected itself to the local jurisdiction and was present here at that time by its duly authorized agents upon whom service of process could be made" (R. 60). The court, however, decided that Limited was not present within the jurisdiction on December 20, 1945, or April 5, 1946, when process in the present suit was served on Limited by respectively serving two of its directors (R. 63, *infra*, p. 11). With reference to this determination, which we contend is erroneous, the following facts are pertinent.

By the latter part of 1941 Limited found itself in financial distress with respect to its American operations because restrictions by the British Government on the export of currency made it difficult, if not impossible, for Limited to send additional funds to its representatives in the United States (R. 6, 51). Limited had entered into financial obligations on which it was being sued by some of its creditors in New York City

and, in these circumstances, arrangements for supplying the enterprise with new capital from American sources became imperative (R. 6, 51-52). In October 1941 Arthur Levey, a director of Limited, began negotiations with two of the dominant companies in the motion picture field, Paramount Pictures, Inc., and General Precision Equipment Corporation (R. 52). Levey's negotiations with these companies led to the execution of the so-called Master Agreement of July 31, 1942, and the agreements supplemental thereto executed on August 11, 1942, which provided for paying off Limited's American creditors (*ibid.*).

Paramount Pictures, Inc., is a New York corporation, with an office and place of business in New York City, engaged in the motion picture business. Through its wholly-owned subsidiary, Television Productions, Inc. (hereafter referred to as TPI), a California corporation with an office and place of business in New York City, Paramount also engages in the ownership and operation of television broadcasting stations. General Precision Equipment Corporation (hereafter referred to as GPE), a Delaware corporation with offices and principal place of business in New York City, is in its own right one of the largest manufacturers of motion picture theatre equipment in the United States. In addition, a subsidiary of GPE, International Projector Corporation, is the largest United States manufacturer of motion picture projectors. GPE itself

is the largest single stockholder in Twentieth-Century-Fox Film Corporation, on whose board of directors it has three members (R. 4).

The Master Agreement of July 31, 1942, entered into among Limited, GPE, and TPI, provided for the formation of a new corporate entity, Scopphony Corporation of America (hereafter referred to as "SCA"). SCA was to be a Delaware corporation with an authorized capital of 1,000 Class "A" shares and 1,000 Class "B" shares. Limited was to be given the 1,000 Class "A" shares, which conferred the right to elect three of SCA's five directors and its president, vice-president and treasurer. GPE and TPI were allotted the 1,000 Class "B" shares, and, by virtue of such ownership, were entitled to elect the two remaining directors and the secretary and assistant secretary of SCA. The Master Agreement set forth the names of the individuals who were to be elected directors and officers of the corporation about to be created, and Levey, a director of Limited, was named therein as the president and a director of the contemplated corporation (R. 15, 61).

SCA was not a party to the Master Agreement of July 31, 1942, but it was a party to two supplemental agreements, executed on August 11, 1942, which were attached to the Master Agreement and which the parties to the Master Agreement bound themselves to enter into (R. 15-17). One of the

August 11 agreements was entered into between Limited and SCA only, but provided that GPE and TPI could enforce, in their own names or that of SCA, all rights, benefits and causes of action arising thereunder (R. 29-30). This agreement provided for the sale and transfer by Limited to ~~SCA~~ of all its right, title and interest in the Scophony Inventions within the Western Hemisphere, and for the exclusion of any other person from access to those inventions (R. 21-23, 61). Royalties for the use of the Scophony Inventions were to be paid by SCA in New York to Limited or Limited's agent, in New York funds (R. 28). SCA agreed to transmit to Limited all technical data and information used or useful in connection with the Scophony Inventions and bound itself not to take out any patents in the Eastern Hemisphere (R. 23). In addition, SCA gave Limited an exclusive sublicense for the Eastern Hemisphere only, without the right further to sublicense, under inventions, designs, processes and techniques covered by television patents and patent applications licensed to it by GPE and TPI (R. 23, 36, 37). SCA also gave Limited an exclusive license for the Eastern Hemisphere, with full rights to sublicense, under patent rights acquired from any other person (R. 24). Finally, under the terms of the agreement, Limited promised not to make, use, or sell television equipment or apparatus, involving the

Scophony Inventions or any inventions or information licensed to it or given it by SCA, for export anywhere within the Western Hemisphere (R. 26).

The other agreement of August 11, 1942, was a patent license agreement under which SCA gave GPE and TPI, respectively, exclusive licenses for the Western Hemisphere under the Scophony Inventions, but without the right to sublicense. The only power of future licensing reserved by SCA for itself was in connection with television broadcasting stations, but even that narrow power could be exercised only if GPE and TPI gave their consent or if SCA acquired 40% of the stock of the proposed licensee (R. 31-32). SCA agreed to transmit to GPE and TPI promptly all technical data and information used or useful in connection with the Scophony Inventions which it received from Limited (R. 33). GPE and TPI were to pay their royalties in New York funds (R. 34, 36). Likewise payable in New York funds were the royalties payable to GPE and TPI in connection with Limited's exclusive license for the Eastern Hemisphere under GPE and TPI inventions (R. 37). Furthermore, SCA agreed that it would not permit Limited or anyone else to export to the Western Hemisphere any product embodying the Scophony Inventions or the inventions licensed to SCA by GPE or TPI (R. 39). GPE and TPI, in turn, agreed not to export to.

the Eastern Hemisphere any television equipment or product embodying any of the Scopphony Inventions (*ibid.*).

The Master Agreement of July 31, and the two implementing agreements of August 11, were entered into in New York and were, by their terms, to be construed in accordance with the laws of New York State (R. 17, 29, 42). They constituted practically the entire basis of the present proceeding, brought by the United States on December 18, 1945, against Limited, SCA, GPE, TPI, Arthur Levey, and two other individual defendants (R. 4-5). The three agreements were described in the Government's complaint (R. 7-11) and were attached to it as exhibits (R. 14, 19, 30). The complaint charged the defendants with conspiring to restrain and monopolize interstate and foreign commerce in products, processes, patents and inventions useful in television and allied industries, in violation of Sections 1 and 2 of the Sherman Act (R. 7). It was alleged that the effects of this conspiracy were a territorial division of the manufacture and sale of television products between Limited, to which was assigned the Eastern Hemisphere, and GPE and TPI, to which were assigned the Western Hemisphere; the suppression and restraint of competition in the manufacture and sale of television apparatus and equipment, both on the domestic and export side; and the acquisition by GPE and

TPI of monopoly power over the Scophony Inventions and products embodying those inventions, which enabled them to suppress the exploitation of those inventions and to deprive others of their use (R. 12-13).

Service of process as to Limited was made by delivering to Arthur Levey in New York City on December 20, 1945, a copy of the complaint and a summons directed to Limited (R. 43). A copy of the complaint and a like summons directed to Limited was served in New York City on April 5, 1946, upon William George Elcock, who was financial comptroller and a director of Limited (R. 44). At the time of said service Levey was residing in New York City (R. 16) and Elcock was travelling in this country in connection, in part, with the interests of Limited (R. 46, 48). Following service on Elcock, he was examined, pursuant to court order, in the presence of counsel for all of the defendants (R. 70-71, 139, 165).

Elcock was not only a director of Limited (R. 49, 91) but was also mortgagee of all of Limited's assets by virtue of having loaned it a considerable sum of money (R. 14, 19, 49, 72, 74, 158, 234, 235). In addition, Elcock was financial comptroller of Limited under a financial comptroller's agreement which he himself described as one that gave him "the power to deal with finance, decide on what shall be manufactured, and dictate the general policy of the company, subject always to

the approval of the Board" (R. 76, 49, 75, 97, 140-142, 167).²

At the time of service of process on him, Elcock held a comprehensive power of attorney from Limited, dated March 14, 1946, empowering him, as a director, to investigate the affairs of SCA and to adjust the impasse that had arisen between the representatives of Limited, and those of GPE and TPI, on SCA's board of directors (R. 97, 99). The specific authorizations conferred by this power of attorney covered such a wide range (R. 244-245) as to justify Elcock's admission that it gave him "full power to do anything that I may decide in connection with the affairs of Scophony, Ltd., as applicable to their American investment" (R. 223). Elcock was specifically authorized, among other things, to commence and prosecute all suits, actions, and proceedings necessary to conserve the interests of Limited in the United States, and to defend any actions or proceedings brought against Limited

² While Elcock in his deposition originally claimed that he never exercised the powers given him as financial comptroller (R. 77, 86, 140, 166), he admitted that he personally arranged for all necessary financing, had the ultimate power to approve expenditures for the purchase of machinery, and personally decided whether the company was in a position to undertake government contracts, which was its only wartime activity in England (R. 167-168). He finally conceded that it was a "legal point" whether his agreement was one calculated to give him control of the company or, as he contended, one which merely made his services available to Limited (R. 168).

(R: 244). Elcock's instructions were to investigate and end the "impasse" in the affairs of SCA that had developed and to dispose of Limited's stock interest in SCA (R. 46-49, 96, 99).

That impasse had arisen because of the institution of this antitrust suit (R. 54, 99, 113); TPI's and GPE's failure and unwillingness to exploit the Scophony Inventions themselves; and TPI's and GPE's unwillingness to modify the existing arrangements so as to permit other American firms to exploit the Scophony Inventions (R. 53, 102, 103). An important feature of the complaint in the present suit is this suppression by TPI and GPE of the Scophony Inventions, both by failure and unwillingness to engage in direct exploitation of those inventions and by preventing SCA from issuing licenses to competitors in the motion picture and electronics fields (R. 11). Six different American manufacturers have at various times, beginning in October 1943, expressed an interest in obtaining a license under the Scophony Inventions, but in each case the directors representing the "B" shares owned by GPE and TPI, whose approval was necessary for the granting of such a license, were unwilling to approve (R. 54-55). Arthur Levey likewise entered into negotiations for new financing for SCA which contemplated modification of the agreements between the corporate defendants, but the required approval of the "B"

directors was not forthcoming. (R. 55). Finally, in July 1945 the "B" directors resigned; under the by-laws of SCA, this meant that there could not be a quorum of the board and that the company's affairs were at a standstill (R. 53-54, 105, 113, 195).

Limited was served with process in this proceeding by service of a copy of the summons and complaint on December 20, 1945, on defendant Arthur Levey, who sent a copy of the complaint to Limited by airmail the next day (R. 43, 50). Levey was a cofounder of Limited and one of its directors from 1936 to March 15, 1946 (R. 49). The court below appropriately described him as "the prime negotiator for Limited of the 'basic agreements' to which the Government has directed its attack" (R. 62). See also R. 121, 254. The court also pointed out that Levey consulted with Limited with respect to the proposed modifications of the class "A" stock allocations which resulted in an agreement dated February 4, 1943, whereby Limited received two-thirds of the "A" shares (R. 62). Levey also kept Limited advised of negotiations which led to SCA's employment of Dr. Rosenthal, who, while employed by Limited in 1939, had purportedly invented the skiatron system of television (R. 52-53). Levey, in addition, had carried out instructions from Limited and kept Limited advised concerning the disputes between SCA's "A" and "B" directors which we have previously described (R. 62).

Levey's advice to Limited and its instructions to him took the form of numerous communications to and from Sir Maurice Bonham-Carter, chairman of the board of Limited, who requested Levey's advice and relied on his handling of Limited's interest in SCA (R. 54, 56, 117-119, 226, 247-248, 253, 255, 260, 261, 263). Limited gave to Levey an irrevocable power of attorney, dated March 26, 1945, and expiring September 30, 1945, authorizing him to vote Limited's shares in SCA (R. 247, 252).

The impasse between the "A" and "B" directors of SCA grew to such proportions that Limited authorized five other people to act on its behalf in these disputes and to assist Levey, namely, Elcock, Robert Boothby, a member of the British Parliament, Commander Arthur Mallet, an English officer, and attorneys James L. Fly and John Sloan (R. 56, 62, 255).

Limited appeared specially and moved both to dismiss the action as to it and the service of process on it, on the ground that the court lacked jurisdiction over it and that the service of process on it was insufficient to vest jurisdiction in the court (R. 45). Upon the basis of affidavits filed by the opposing parties (R. 46-58) and Elcock's deposition (R. 70-265), the district court concluded that Limited was not "present" within the jurisdiction (R. 58-63), and it therefore entered judgment dismissing the complaint and

quashing service of process as to Limited (R. 66-67).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred—

(1) In holding that Scophony, Limited, was not doing business in the Southern District of New York so as to bring it within that district for purposes of suit against it and service of process upon it.

(2) In entering a final judgment dismissing the complaint as to Scophony, Limited.

(3) In entering a final judgment quashing service of process as to Scophony, Limited.

SUMMARY OF ARGUMENT

I

For a foreign or alien corporation to be validly sued and served with process within a federal judicial district, it must be doing business therein of a nature substantial enough to warrant the inference that it is "found" or "present" within that district. This rule is the test of valid service both under Section 12 of the Clayton Act and under the due process clause of the Fifth Amendment. However, it is not a mechanical rule, but one that must be fitted to the distinctive facts of each case.

One distinctive feature of this case is that appellee Limited's business within the district is that of exploiting and licensing patents. Con-

sidering the nature of such a business, Limited's entry into exclusive licensing arrangements with two companies doing business within the district, who occupy dominant positions in the motion picture equipment and television fields, respectively, constitutes the doing of a substantial amount of business.

The next and perhaps the most important factor in this case is that Limited's entire business within the district has, continuously since July 31, 1942, been governed by a Master Agreement entered into between it and the two dominant concerns mentioned above. That Agreement called for the doing of business within the district, and for Limited's engaging in various business activities within the district. Also it involved Limited's availing itself of the privileges and benefits of the patent, contract, and corporation laws of the United States and of New York, the state of the forum. Finally, the Master Agreement was the main basis of the present antitrust proceeding against Limited. That proceeding cannot be satisfactorily concluded unless the judgment entered therein terminates the Agreement and requires Limited to divest itself of its stock interest in a Delaware corporation, also doing business within the district, which is the corporate instrumentality of that illegal Agreement. In sum, the Master Agreement of July 31, 1942, was of such comprehensive scope and continuity and so completely circumscribed and regulated Limited's doing of

business in the district as to, by itself, justify the conclusion that Limited was "found" in the district.

The Master Agreement also provided for the subsequent formation of a corporate subsidiary, SCA, which was to be owned and controlled by Limited and the two American firms that had entered into the Master Agreement with Limited. The main basis for the decision of the court below was its reliance on precedents which might have been applicable to a corporate subsidiary wholly owned and controlled by Limited and in actual fact acting as an agent for Limited. In this case, however, the two American firms had and exercised a "veto power" over SCA's activities; SCA was not in fact an agent of Limited, but rather the corporate instrumentality of the illegal cartel arrangement among its three incorporators; and SCA did not effectuate the objectives of Limited within the district, because its American corporate stockholders exercised their veto power. Limited therefore had to and did rely on individual agents (including its representatives on SCA's board of directors) for the effectuation of its business objectives within the district. Limited's reliance on individual agents to act for it within the district is evidenced by the actual naming of such agents as directors and officers of SCA before SCA had been created; the efforts of those individual agents to spur SCA into

more active operation; and the activities of six different individual agents in trying to negotiate a settlement of the impasse between Limited and the American stockholders of SCA.

II

The constitutional standards of venue and service of process set forth in *International Shoe Company v. Washington*, 326 U. S. 310, are applicable to Section 12 of the Clayton Act. The *International Shoe* case merely restates, in more specific and less mechanical and quantitative terms, the general rule that venue and service of process is dependent on corporate presence in a jurisdiction, as stated in *Peoples Tobacco Company, Limited v. American Tobacco Company*, 246 U. S. 79, and the beginning of Argument I. The standards of Section 12 of the Clayton Act are the same as those of constitutional due process. This conclusion is supported by the practice of the courts themselves, and by the necessity for giving effect to the broad public policy of the Sherman Act. Furthermore, Section 12 was intended to be a liberalizing venue and service of process statute. To hold that its standards are narrower than those of constitutional due process would be to make its policy more restrictive than that obtaining generally in the federal courts.

ARGUMENT.

I

SCOPHONY, LIMITED, WAS DOING A SUBSTANTIAL BUSINESS IN THE NEW YORK DISTRICT AND WAS "FOUND" THEREIN, WITHIN THE MEANING OF BOTH THE LANGUAGE OF SECTION 12 OF THE CLAYTON ACT AND THE LIMITATIONS IMPOSED BY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

The general rule governing venue and service of process against a foreign corporation, both under Section 12 of the Clayton Act and under the due process clause of the federal Constitution, is that a foreign corporation may be sued or served in a jurisdiction if it is "found" or "present" therein; and it is "found" or "present" within a jurisdiction if it does business therein "of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the State or district where service is attempted." *Peoples Tobacco Company, Ltd. v. American Tobacco Co.*, 246 U. S. 79, 87; *St. Louis Railway Co. of Texas v. Alexander*, 227 U. S. 218, 227; *Consolidated Textile Co. v. Gregory*, 289 U. S. 85.

The court below correctly stated this general rule (R. 60), but, we believe, it did not correctly apply the rule to the case before it. This was because the court did not, in our judgment, take adequate account of the distinctive nature of Limited's business activities within the district, and also because the court failed to appraise the

facts as to such business activities in a sufficiently "non-quantitative" and "non-mechanical" way. See *International Harvester Co. v. Kentucky*, 234 U. S. 579, 583; *International Shoe Co. v. Washington*, 326 U. S. 310, 319; *Industrial Research Corp. v. General Motors Corp.*, 29 F. (2d) 623, 626 (N. D. Ohio).

The court below stated that, by the early part of 1942, Limited had ceased to be "actively engaged in placing its product in the American market" (R. 60-61). It then looked to the subsequent activity of SCA, the corporate subsidiary of Limited, to determine whether this constituted the doing of business by Limited within the district. The court concluded that SCA did not differ from any ordinary corporate subsidiary, except possibly for the fact that Limited received 50% of the royalties earned by it (R. 62). It also decided that SCA had not acted as an agent for Limited, except that on occasion it had purchased certain materials and equipment in the United States for Limited (*ibid.*). Relying on a general legal doctrine that the doing of business by a corporate subsidiary is not the doing of business by its parent, the conduct of SCA was not, in the court's view, sufficient to inject Limited, its parent, into the jurisdiction (R. 61-62).

With respect to the activities of Limited's individual agents, the court noted Levey's activities as a negotiator of the Master Agreement of July

31 and the agreements supplemental thereto; his consultations with Limited concerning modification of the "A" stock allocations and SCA's employment of the inventor Rosenthal; and Levey's activities and those of others in connection with the settlement of disputes between the class "A" directors, representing Limited, and the class "B" directors, representing GPE and TPI (*ibid.*). The court viewed these activities as involving the conduct of SCA's business and protection of Limited's interest therein, but as not involving the business of manufacturing, selling, and licensing television apparatus, which, the court said, was the business in which Limited was engaged (*ibid.*).

The district court's analysis, we think, ignored some factors entirely and misconstrued the significance of others. In the first place, the court gave no consideration to the fact that Limited's business in the New York district currently was the exploitation and licensing of the Scopphony Inventions by and to others, rather than itself manufacturing or selling products embodying those inventions. Furthermore, Limited's subsidiary, SCA, was a patent holding company empowered to license those inventions but not empowered to manufacture or sell products made thereunder.

Second, the court gave inadequate recognition to the Master Agreement of July 31, 1942; which not only provided for the formation of SCA, but also dictated the entire framework of Limited's subse-

quent business in the United States. The Master Agreement was entered into with two corporations doing business in the New York district and called for the doing of business within that district. It involved Limited's taking advantage of the privileges and benefits of the patent, contract, and corporation laws of the United States and of the State of New York. In addition, the agreement resulted in the institution of the present proceeding charging violation of the antitrust laws, a proceeding which, in the Government's view, cannot be satisfactorily brought to a conclusion unless the judgment entered by the court terminates the agreement and requires Limited and the other defendants to divest themselves of their stock in SCA, the corporate instrumentality of that agreement.

Third, the court ignored the fact that, because GPE and TPI, co-conspirators of Limited's and of SCA, had and exercised a "veto power" over SCA's activities, SCA never succeeded in carrying out Limited's objectives in the United States. Consequently, the acts which are determinative of whether Limited was doing business within the jurisdiction were not the acts of SCA, but rather the acts of Limited's representatives on SCA's board of directors and of other agents of Limited who dealt with SCA. We also point to business activities of Limited within the domestic jurisdiction which could not be performed by SCA or Limited's agents on SCA's board, but required Limited's active intervention.

Finally, we feel that the court did not draw the correct inferences from the existence of the disputes between Limited and GPE and TPI, and from the activities of Limited's agents in attempting to adjust these disputes. Settlement of those disputes involved, not merely putting SCA's affairs in order, but also determination of the way in which Limited's Seophony Inventions would be developed in this country and the nature of the reward to be received by Limited from that development. Moreover, the settlement negotiations, like the disputes out of which they arose, went to the root of this antitrust proceeding against Limited and its co-conspirators, and involved still further acts by Limited within the jurisdiction of the court below.

In succeeding sections of the Argument, these factual considerations are developed in greater detail. To the extent that the facts establish Limited to be "found" within the district, they satisfy both the service of process and the venue provisions of Section 12 of the Clayton Act. Under Section 12 there is venue in the court if the defendant is either "found" or "transacts business" within the judicial district, whereas the Section permits service of process only in a district in which the defendant is "found." The venue provision is more easily satisfied because the mere transaction of business by a corporation within the judicial district lays the basis for venue

in the court. A foreign corporation may be validly served with process in a district, if it "transacts business" therein of any substantial character." *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U. S. 359, 373; *Haskell v. Aluminum Company of America*, 14 F. (2d) 864, 867, 869 (D. Mass.); *Northern Kentucky Telephone Co. v. Southern Bell Telephone & Telegraph Co.*, 54 F. (2d) 107 (E. D. Ky.). The venue provision, however, is satisfied if the defendant merely "transacts business" within the district. See *Eastman Kodak Co. v. Southern Photo Materials Co.*, *supra*, at pp. 372-373; *Hansen Packing Co. v. Armour & Co.*, 16 F. Supp. 784, 786 (S. D. N. Y.); *Haskell v. Aluminum Company of America*, *supra*, at p. 867; *Jeffrey-Nichols Motor Corp. v. Hupp Motor Car Corp.*, 46 F. (2d) 623, 624, (C. C. A. 1).

A. SCOPHONY, LIMITED, HAS BEEN AND IS ENGAGED IN THE NEW YORK DISTRICT IN THE BUSINESS OF PATENT DEVELOPMENT AND EXPLOITATION

(1) *Limited's business was patent exploitation.*—While the business upon which Limited originally embarked in the New York district was that of manufacturing and selling in the American market devices on which it held patents, it found itself without sufficient funds to continue direct manufacture and sale (*supra*, pp. 5, 6). It accordingly abandoned this particular method of doing business and undertook the exploitation of the Scophony Inventions in partnership with American concerns having greater financial re-

sources. This change in the character of the company's business does not mean that, after the change occurred, Limited ceased to do business in the New York district. The licensing of its inventions, the transmission and exchange of information relating to use of these inventions, and the receipt and transmission of royalties in connection with patent licensing, was, we submit, no less a "doing of business" than, let us say, the issuance of insurance policies.

While the commercial exploitation of inventions is, therefore, the doing of business, the incidents of such a business differ from those of the ordinary manufacturing and selling business with which most of the relevant cases are concerned. The distinguishing feature in the successful operation of the former type of business is not multiplicity of transactions, but continuity and regularity of business program. For the carrying on, within a particular jurisdiction, of the business of a patent-holding and development company, it is not necessary that the company maintain an office, agency or warehouse in the jurisdiction; or own any real estate or other physical property therein; or make any sales or solicit any orders; or engage in any of the other usual activities characteristic of a manufacturing or sales organization. Cf. *Pennsylvania Lumbermen's Mutual Fire Insurance Co. v. Meyer*, 197 U. S. 407, 409, 414; *LaPorte Heinekamp Motor Co. v. Ford Motor Co.*, 24 F. (2d) 861 (D. Md.); *Jeffrey-*

Nichols Motor Corp. v. Hupp Motor Car Corp., 46 F. (2d) 623, 625 (C. C. A. 1). A corporation engaged in exploiting its patent position and research resources in the television field need do no more than what Limited has done in this case, i. e., enter into licensing arrangements with large-scale manufacturers. When Limited gave two dominant concerns, doing business in New York City, exclusive rights to exploit its Scophony Inventions (*supra*, pp. 8, 9), it no more took itself out of the doing of business in that city than would be the case if a concern granted an exclusive sales territory therein to a single individual. Cf. *Winkler-Koch Engineering Co. v. Universal Oil Products Co.*, 70 F. Supp. 77, 91-94 (S. D. N. Y.); *Rendelman v. Niagara Sprayer Co.*, 16 F. (2d) 122 (E. D. Ill.).

(2) *The Master Agreement of July 31, 1942.*—We submit, further, that the execution by Limited of the Master Agreement of July 31, 1942, and of the two attached implementing agreements were acts of such pervasive and continuing significance as, single-handedly, to bring about Limited's continued "presence" within the jurisdiction. They completely regulated and circumscribed the extent and manner of Limited's exploitation of the Scophony Inventions in the United States. By their mere existence, six other manufacturers interested in doing business under the Scophony Inventions were excluded from doing so. By virtue of them, Limited excluded

itself from direct manufacture and sale on the American television equipment market. The effect of these agreements in frustrating utilization and exploitation of the Scopphony Inventions in this country is a basic element of the charges of law violation made in the present proceedings (*supra*, pp. 10, 11). Looking at the economic and legal ramifications of these agreements in a "non-mechanical" and "non-quantitative" way (see *supra*, p. 21), they were, "because of their nature," the kind of single acts which "may be deemed sufficient to render the corporation liable to suit." See *International Shoe Company v. Washington*, 326 U. S. 310, 318; *Frene v. Louisville Cement Company*, 134 F. (2d) 511, 515 (App. D. C.); *Empire Fuel Co. v. Lyons*, 257 Fed. 890 (C. C. A. 6); *Beach v. Kerr Turbine Co.*, 243 Fed. 706, 711 (N. D. Ohio); cf. *Hess v. Pawlowski*, 274 U. S. 352.

(3) *Limited's enjoyment of rights and powers conferred by American law.*—By virtue of its Master Agreement with GPE and TPI, Limited took full advantage of the benefits and privileges conferred by the patent laws of the United States, the corporation laws of New York and Delaware, and the contract law of New York. Limited was making strenuous efforts to resolve its disputes with the American incorporators of SCA and to protect its stockholders' interest in SCA (*supra*, pp. 12-15), and achievement of these ends would,

in the view of the parties, necessitate further recourse to domestic law. It would be anomalous if an alien corporation, which thus availed itself of rights and powers conferred by federal and state law for carrying out a business undertaking within the jurisdiction of the district court, could not be sued in that court on contracts made by it and to be performed by it within that jurisdiction. See *Railroad Company v. Harris*, 12 Wall. 65, 83, 84; *St. Clair v. Cox*, 106 U. S. 350, 355; *Henrietta Mining & Milling Co. v. Johnson*, 173 U. S. 221; *United States v. Pacific Forwarding Co.*, 8 F. Supp. 647, 652, 653 (W. D. Wash.).

(4) *Limited's business violated the antitrust laws.*—The inappropriateness and undesirability of having an alien corporation immune from suit is manifest in a situation like this one, where the corporation's conduct has involved a continuing violation of the antitrust laws, where such illegal conduct has consisted so directly and entirely of business transacted by it within the jurisdiction in which it is sued, and where its corporate partners in the conspiracy charged as being illegal are also found within the jurisdiction and doing business therein (see *supra*, pp. 6-11). Whether a foreign corporation may be subjected to suit may depend in large measure on the relationship of the business done by it to the cause of action

asserted against it.³ "A corporate defendant who is enough in the state or district there to wrong some one should be held to be enough in the state or district to be there answerable for what it has there wrought." *Frey & Son v. Cudahy Packing Co.*, 228 Fed. 209, 213 (D. Md.). To combine with others in the district to suppress competition and to secure a monopoly in a field of business, which is what Limited has done, may be an illegal business activity, but it is nonetheless business activity that is actionable. See *Giusti v. Pyrotechnic Industries, Inc.*, 156 F. (2d) 351 (C. C. A. 9), certiorari denied, 329 U. S. 787; *Jeffrey-Nichols Motor Corp. v. Hupp Motor Car Corp.*, 46 F. (2d) 623 (C. C. A. 1).

We therefore submit that the judgment here should be similar to what it was in the closely parallel case of *Dobson v. Farbenfabriken of Elberfeld Company*, 206 Fed. 125 (E. D. Pa.). That case involved the application of Section 7 of the Sherman Antitrust Act (a precursor of Section 12 of the Clayton Act), and concerned the creation by the defendant German corporation of a New York corporation for the precise pur-

³ See *Davis v. Farmers Cooperative Co.*, 262 U. S. 312, 316, 317; *Mutual Life Insurance Company v. Spratley*, 172 U. S. 602; *La Porte Heinekamp Motor Co. v. Ford Motor Co.*, 24 F. (2d) 861, 864 (D. Md.); *Rendelman v. Niagara Sprayer Company*, 16 F. (2d) 122 (E. D. Ill.); *Farmers' & Merchants' Bk. v. Fed. Reserve Bk.*, 286 Fed. 566, 590-591 (E. D. Ky.). But cf. *Rosenberg Bros. & Co., Inc. v. Curtis Brown Co.*, 260 U. S. 516; *Davega v. Lincoln Furniture Manufacturing Co.*, 29 F. (2d) 164, 166 (C. C. A. 2).

pose of effectuating an illegal international cartel agreement. Except for the fact that the *Dobson* case involved a sales subsidiary and the instant case involves a patent development subsidiary, the factual situations are identical. The court in the *Dobson* case held (p. 128) that the German corporation was found within the jurisdiction because it carried "on through the New York Company as its agent the very business which is charged in the statement of claim to have been conducted in violation of the act of Congress."

A more recent case, *United States v. U. S. Alkali Export Assn.* (S. D. N. Y.), decided July 16, 1946,⁴ analyzed the relevant facts in greater detail and reached a similar conclusion. The court there held that a British corporation was found within its jurisdiction because of the activities of one of its subsidiaries domiciled in New York. This subsidiary had acted as a medium for negotiations and correspondence with American business firms which had entered into contracts (alleged to violate the antitrust laws) with the British parent. Operation of what the court termed a "liaison office" or "commercial legation" of the British parent was held to be the doing of sufficient business to make the British company liable to service of process.⁵

⁴ The Government is filing copies of this opinion, which has not been reported, with the Clerk of this Court.

⁵ Cf., under a cognate process statute, the converse situation where the Court concludes that the alien subsidiary of an American parent is "found" within the judicial district, *S. E. C. v. Minas De Artemisa, S. A.*, 150 F. 2d 215 (C. C. A. 9).

There has been a growing tendency for corporations doing an international business to carry on their business in a foreign country in the form of separately incorporated subsidiaries. See Liefmann, *Cartels, Concerns and Trusts*, 244, 265 (1925); Bonsal and Borges, *Limitations Abroad on Enterprise and Property Acquisition*, 11 *Law and Contemporary Problems* 720, at 737-738 (1946). The relief against Limited in this action, which the Government envisages as essential, includes not only injunctive prohibitions against Limited, but divestiture of its interest in SCA, possible dissolution of SCA, and relief against the patents and other rights under the Scophony Inventions currently held by SCA (R. 13). Since Limited had originally contributed these inventions to SCA and has at least as much of an interest in them as any of its American partners, the presence of a corporate subsidiary in this country should not blind us to the fact that Limited exercised at least partial control over the subsidiary's operations and has thereby been in a position to obstruct the public policy embodied in the antitrust laws of the United States. To give recognition to such facts does not, we submit, mean ignoring the separate corporate entity of SCA; it represents, rather, a recognition of the extent to which Limited has itself functioned within the local jurisdiction.

(5) *Acts within the district performed by Limited itself.*—We shall not burden the Court with a detailed enumeration of the numerous acts

which, under the 1942 basic agreements, were to be performed by Limited within the district court's jurisdiction. In summary, these further business activities impinging on the jurisdiction of the court below included such matters as the giving by Limited of further patent information and technical data to SCA; the receipt by Limited of patent information and technical data emanating from GPE and TPI; the receipt by Limited of royalties from SCA; and the transfer of the inventor Rosenthal from Limited's pay roll to SCA's pay-roll. See *supra*, pp. 8, 9, 16, 21, 22; R. 256-257. All of these activities were ignored by the court below.

B. SCOPHONY, LIMITED, HAS BEEN CONTINUOUSLY CARRYING ON SUBSTANTIAL BUSINESS WITHIN THE NEW YORK DISTRICT THROUGH INDIVIDUAL AGENTS

Judge Learned Hand has well said, in connection with the law as to when a foreign corporation is found in a jurisdiction, that "we must step from tuft to tuft across the morass." See *Hutchinson v. Chase & Gilbert*, 45 F. (2d) 139, 142 (C. C. A. 2). Nowhere is this more true than in dealing with the conflicting inferences which the courts have drawn from the presence of a subsidiary of a foreign corporation within the domestic jurisdiction. A careful examination of the facts of this case leads, we think, to the conclusion that the path across the morass followed by the court below is an irrelevant one—a profitless detour; and that there is solid highway to travel for one who follows the facts.

We do not here ask this Court to abandon the orthodox view that the corporate separation between Limited and SCA, "though perhaps merely formal, was real," and was not "pure fiction". See *Cannon Mfg. Co. v. Cudahy Co.* 267 U. S. 333, 337. For the purposes of this case, if we are dealing with a corporate fiction, we are prepared to deal with it as "a fiction created by law with intent that it should be acted on as if true," see *Klein v. Board of Supervisors*, 282 U. S. 19, 24. We are, however, asking this Court to look at the facts before it and "not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact," see *McDonald v. Mabee*, 243 U. S. 90, 91. Fair play, we wish to repeat, has not been in any way denied Limited in this proceeding, which is being sued on activities centered within the judicial district and has had actual notice of this proceeding. We are anxious only that fair play not be denied the domestic competitors of Limited and the public, whose injuries cannot be made good except by relief directed against Limited.

SCA started its corporate existence as the instrumentality not only of Limited, but also of two other large corporations, GPE and TPI, which had behind them the powerful financial resources of the Paramount and Fox film interests (*supra*, pp. 6, 7). By the time this proceeding was instituted and process served, it was clear that Limited's intentions respecting SCA had been frustrated and that SCA, whatever its legal rela-

tionship to Limited might be, was in actual fact not then acting as Limited's agent. Limited's inability to rely on SCA for the accomplishment of its business objectives made it necessary for it to call on the services of *individual* agents like Levey, Elcock and others, and to inject itself, through these agents, into the New York jurisdiction.

Under such circumstances it is unnecessary to decide whether, as the court below felt, SCA was a formally separate and distinct entity from Limited, the acts of which could not be regarded as those of its British parent (see *Cannon Mfg. Co. v. Cudahy Co.*, 267 U. S. 333; *Consolidated Textile Co. v. Gregory*, 289 U. S. 85), or whether, on the other hand, Limited, as a parent enjoying the fruits of its subsidiary's activity, should be held responsible for the acts of its corporate agent or adjunct (see *Detroit Motor Appliance Co. v. General Motors Corp.*, 5 F. Supp. 27, 30-31 (E. D. Ill.); *Industrial Research Corp. v. General Motors Corp.*, 29 F. (2d) 623, 626, 627 (N. D. Ohio); *United States v. U. S. Alkali Export Assn.* (S. D. N. Y.), *supra*).

Limited's reliance on individual agents as well as the corporate agency of SCA was evident even before SCA was formed, when there was written into the Master Agreement of July 31, 1942, the names of the officers and directors who were to be Limited's representatives in SCA (R. 15). When it became clear that GPE and TPI would

not permit SCA to function as Limited's agent, Limited continued to act within the jurisdiction through Arthur Levey and its other representatives and agents on SCA's board of directors. See *supra*, pp. 7, 13, 14.

The court below ignored the repeated efforts of Limited's individual agents within the jurisdiction to spur its inactive subsidiary into more active operation. In so doing, it ignored a factor analogous, in the context of a patent exploitation enterprise, to the solicitations of orders and contracts in the case of foreign sales companies. Such solicitations have been considered in great measure determinative of whether a foreign corporation is found within a domestic jurisdiction. See *International Harvester Co. v. Kentucky*, 234 U. S. 579; *Frene v. Louisville Cement Co.*, 134 F. (2d) 511 (App. D. C.). In essential economic outline, Limited was maintaining, through its representatives on the Board of SCA, a "liaison office" and an agency for the solicitation of business within the jurisdiction. See *Hutchinson v. Chase & Gilbert*, 45 F. (2d) 139, 141 (S. D. N. Y.); *United States v. U. S. Alkali Export Assn.*, *supra*. Limited's solicitations of new manufacturers to exploit the Scophony Inventions is, in our view, corroborative evidence that Limited was present within the jurisdiction, that presence having been established in the first place by Limited's continuing arrangements with GPE and TPE.

The court below likewise ignored the continuous efforts of Limited, through six different individual agents, to negotiate a settlement of the impasse between it and GPE and TPI. The facts with respect to that impasse have been previously set forth in some detail (*supra*, pp. 12-15). We wish to point out here only that the impasse could not be resolved without settling this antitrust proceeding (R. 198, 205); that Elcock's power of attorney extended to the compromise by Limited of this lawsuit or the entry of a default judgment against it (R. 244); and that the existence of the disputes between Limited and its corporate partners, and the negotiations for their adjustment, made it necessary for Limited to inject itself affirmatively into the jurisdiction. A foreign corporation's involvement in disputes and negotiations for their settlement, such as these, have long been recognized by the courts as a basis for deciding that the foreign corporation was "found" within the jurisdiction so that it could properly be sued and served with process therein. *Mutual Life Insurance Co. v. Spratley*, 172 U. S. 602; *Pennsylvania Lumbermen's Mutual Fire Ins. Co. v. Meyer*, 197 U. S. 407; *St. Louis S. W. Ry. Co. of Texas v. Alexander*, 227 U. S. 218; *Hutchinson v. Chase & Gilbert*, *supra*, at p. 142; *Geo. Wm. Bentley Co. v. Chivers & Sons, Ltd.*, 215 Fed. 959 (S. D. N. Y.).

II

THE STANDARDS OF VENUE AND SERVICE OF PROCESS APPLICABLE TO DEFENDANT SCOPHONY, LIMITED, ARE THE CONSTITUTIONAL STANDARDS SET FORTH BY THIS COURT IN *INTERNATIONAL SHOE COMPANY v. WASHINGTON*, 326 U. S. 310

We have, in the preceding section of this argument (see p. 20, *supra*), indicated that the same general concept, i. e., corporate presence within a jurisdiction, determines whether a foreign corporation has been validly served with process both under Section 12 of the Clayton Act and, independently of statute, under the due process clause of the Constitution. In this section we wish to establish that "corporate presence" has the same meaning in both contexts and that Section 12 standards of venue and service of process are in fact the same as those of constitutional due process, as most recently set forth by this Court in *International Shoe Co. v. Washington*, 326 U. S. 310. Although that case was concerned with the constitutional authority of the states, it cited without differentiation *People's Tobacco Co., Ltd. v. American Tobacco Co.*, 246 U. S. 79, a case under a federal venue statute which is the leading case stating the test in its customary terms (see p. 20, *supra*), and cases involving the constitutional power of the states under the due process clause. The *International Shoe* case appears to substitute, for a mechanical and quantitative approach to the problem of corporate presence within a jurisdiction, a more practical test, under which venue may be established against a foreign corpo-

ration if the forum has sufficient contacts with the corporate activity so that an unreasonable burden is not imposed upon the corporation in defending a suit therein. See 326 U. S. at 317. Service of process may be made against a foreign corporation if there is reasonable assurance that such service will convey actual notice of the pendency of the proceeding against the corporation.*

* There is some doubt whether Section 12 of the Clayton Act applies to alien corporations. This Court said, with respect to the federal statute governing venue suits generally when it was in a form almost identical with that of Section 12 of the Clayton Act, that, if it "*could have been treated as extending the provision to suits against aliens, it could only be by virtue of the clause permitting defendants to be sued in the district in which they were found.*" [Italics supplied.] *In re Hohorst*, 150 U. S. 653, 661. The statute referred to provided that no civil suit could be brought "against any person by any original process or proceeding, in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ." 1 Stat. 79; Rev. Stat. § 739, as amended by the Act of March 3, 1875, 18 Stat. 470, c. 137, § 1, and prior to the Act of March 3, 1887, 24 Stat. 552. The special venue statute relating to patent infringement suits, which is somewhat analogous to Section 12 of the Clayton Act, has specifically been held inapplicable to alien corporations in the lower courts, on the authority of *In re Hohorst*. See *United Shoe Machinery Co. v. Duplessis Independent Shoe Machinery Co.*, 133 Fed. 930 (D. Mass.); *Sandusky Foundry & Machine Co. v. De Lavaud*, 251 Fed. 631 (N. D. Ohio) and the discussion on page 42, *infra*. We are not pressing this point, however, because of our feeling that Section 12 standards are the same as those of constitutional due process, as set forth in the *International Shoe* case, which we believe adequate to protect both the government's and Limited's appropriate interests. There is no case passing directly on whether the general federal venue statute, when it was in the form above referred to, applied to alien corporations.

The courts have not undertaken to distinguish between the constitutional content of "corporate presence" and its statutory content under Section 12 of the Clayton Act. They have, when dealing with the meaning of "corporate presence" or of the word "found" in a specific statute, relied on cases involving different statutory or constitutional contexts as apposite precedents. Thus in the *International Shoe* case, this Court relied, without apparent distinction, on prior decisions involving the due process clause of the 14th Amendment, the diversity jurisdiction of the federal courts, and venue provisions applicable to the Sherman Act. Conversely, in the *People's Tobacco* case, a case based on Section 7 of the Sherman Act,* the Court relied on precedents dealing with the validity of state judicial action under the due process clause of the Constitution.

* Section 7, the venue provision applicable to treble damage suits by private parties for violations of the Sherman Act, authorizes suit "in any district court of the United States in the district in which the defendant resides or is found" (26 Stat. 210; 15 U. S. C. Section 15). In its application to defendant corporations, Section 7 does not differ from the service of process provisions of Section 12 of the Clayton Act. Both the word "resides," as used in Section 7 (*Southern Pacific Company v. Denton*, 146 U. S. 202; *Seaboard Rice Milling Company v. Chicago, Rock Island & Pacific Railway Company*, 270 U. S. 363), and the word "inhabitant" used in Section 12 of the Clayton Act (*Shaw v. Quincy Mining Co.*, 145 U. S. 444; *G. H. & S. A. Ry. Co. v. Gonzales*, 151 U. S. 496), refer, in the case of corporations, to judicial districts within the state of their incorporation.

Also supporting the identity between the constitutional and statutory connotations of the word "found" is the fact that, when Congress enacted the Clayton Act, it presumably used words as they were then defined by the courts. See *Standard Oil Co. v. United States*, 221 U. S. 1, 59. The word "found" was then being defined by the courts very largely in a constitutional context. See *Haskell v. Aluminum Company of America*, 14 F. (2d) 864, 867 (D. Mass.) and cases cited; *Deutsch v. Times Publ. Corp.*, 33 F. Supp. 957 (S. D. N. Y.). Furthermore the constitutional generality and adaptability of the substantive provisions of the Sherman Act (see *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 359, 360) and the broad policy of that Act argue for giving the venue and service of process provisions applicable to proceedings brought under it the maximum liberality of interpretation compatible with constitutional safeguards.

If Section 12 of the Clayton Act is considered in the light of cognate federal statutes relating to venue and service of process, the conclusion that its standards are the same as the relevant constitutional standards is reinforced. Like the other statutes governing venue and service of process under the antitrust laws, Section 12, it may be noted, is in the nature of a specific exception to the general statute governing venue and service of process in the federal courts, which assumed its present form in 1888 (Section 51 of the Judicial Code, 28 U. S. C.

112.)⁷ The same cases that held this statute not to apply to alien corporations, on the ground that such corporations were not "inhabitants" of a federal judicial district, held them to be suable and liable to service of process in any district where valid service could be had. *In re Hohorst*, 150 U. S. 653, 662; *Jarowski v. Hamburg-American Packet Co.*, 182 Fed. 320 (C. C. A. 2); *G. H. & S. A. Ry. Co. v. Gonzales*, 151 U. S. 496, 503, 506, 514 (dissent); *Barrow Steamship Co. v. Kane*, 170 U. S. 100, 112. The specific statutory provision governing venue and service of process in patent infringement proceedings, which was enacted in 1897 (and which was similar to Section 12 of the Clayton Act),⁸ has like-

⁷ Section 11 of the Judiciary Act of 1789, 1 Stat. 79, R. S. Section 739, provided that no civil suit should be brought "against an inhabitant of the United States, by any original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ." The Act of March 3, 1875, 18 Stat. 470, substituted the words "against any person" for the words "against an inhabitant of the United States." R. S. 739 was again amended in 1887, and 1888 (24 Stat. 552, 25 Stat. 434) so as to provide that "no civil suit shall be brought * * * against any person by any original process or proceeding in any other district than that whereof he is an inhabitant." This provision is now embodied without further change in Section 51 of the Judicial Code, 28 U. S. C. Sec. 112.

⁸ Section 48 of the Judicial Code (28 U. S. C. Section 100) adopted on March 3, 1897, reads as follows: "In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation shall have committed acts of infringe-

wise, on the authority of *In re Hohorst*, been held inapplicable to alien corporations. See *United Shoe Machinery Co. v. Duplessis Independent Machinery Co.*, 133 Fed. 930 (D. Mass.); *Sandusky Foundry & Machine Co. v. De Lavand*, 251 Fed. 631 (N. D. Ohio). Absent statutory standards under these two statutes, the only available standards for venue and service of process are constitutional ones.

It would be a strange consequence if the special venue and service statutes for antitrust cases were designed, or interpreted, to make it more difficult to reach alien corporations violating the antitrust laws than would have been the case if the general law, which for alien corporations was the constitutional standard, had governed. It seems clear that Section 7 of the Sherman Act and Section 12 of the Clayton Act were meant to incorporate a broader test than that of "inhabitant" contained in Section 51 of the Judicial Code, inasmuch as both of the former sections permits suit in any district in which the defendant may be "found." Indeed, when in *Peoples Tobacco Co., Ltd. v. American Tobacco Co.*,

ment and *have a regular and established place of business*. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons, or subpoena upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought." (The italicized words show the similarity of this statute and Section 12 of the Clayton Act.)

* See *Robertson v. Railroad Labor Board*, 268 U. S. 619, 623.

246 U. S. 79, the Court interpreted the word "found" as used in Section 7 of the Sherman Act it relied upon cases establishing constitutional due process standards for the states, which were in fact the primary sources of information available to Congress as to the meaning of "found" in that context when it enacted the special statutory provisions applicable to Sherman Act proceedings.

The policy considerations that influenced the courts in dealing with alien corporations under Sections 51 and 48 of the Judicial Code apply to Sherman Act proceedings, probably with increased force. An alien corporation can not only sue a United States citizen in any district where the defendant resides on general causes of action, but it is given the specific power to sue domestic businesses in the federal district courts to recover treble the damages to it caused by such persons' violation of the antitrust laws. Cf. *United States v. Bedouin S. S. Co., Ltd.*, 167 Fed. 863, 866 (S. D. N. Y.). We have already cited the cases that support the view that venue and amenability to process are a legitimate consequence of the great benefits that a foreign corporation obtains under the laws of the forum (see pp. 28-9, *supra*). It is therefore only fair that alien corporations which violate the Sherman Act in this country should not be exempt from suit. Cf. *Lafayette Insurance Co. v. French*, 18 How. 404. The purpose of a venue statute is to regulate and distribute jurisdiction among the respective judicial districts of the United States, not to an-

nul and defeat that jurisdiction or immunize defendants from the operation of the laws of the United States. See *In re Hahorst*, 150 U. S. 653, 660; 3 Hughes, *Federal Practice, Jurisdiction and Procedure*, 327. Even if one could enforce the antitrust laws extraterritorially, one should not have to go to the courts of another nation to enforce a statute of the United States or of a state of the union. See also *Geo. Wm. Bentley Co. v. Chivers & Sons*, 215 Fed. 959, 962 (S. D. N. Y.); *Fisher v. Canadian Pacific Ry. Co.*, 1 F. Supp. 235, 237 (W. D. N. Y.).

We wish to stress our conviction that Limited's activities within the district would constitute corporate presence within the jurisdiction even if it were a foreign corporation, i. e., incorporated in some other state of the union than the forum. While the rules as to venue and service of process on foreign and alien corporations, respectively, may be identical, different facts, however, may fit the uniform rule. Thus, with respect to venue, the *International Shoe* case requires that the defendant foreign corporation and the transactions in which it was involved maintain certain minimum contacts with the forum, so that the maintenance of the suit does not "offend traditional notions of fair play and substantial justice." This Court, in that case, cites with approval the language of Judge Learned Hand in *Hutchinson v. Chase & Gilbert*, 45 F. (2d) 139, 141 (C. C. A. 2), to the effect that the end served by a venue statute is the balancing of the hardships caused the plaintiff and defendant in a case, re-

spectively, by the selection of alternative forums. Where the government is the plaintiff in an anti-trust proceeding and the alternative is that the defendant entirely escapes liability for unlawful conduct within the United States, a strong burden of proving complete absence from the jurisdiction rests on the defendant, particularly when there is no claim that there would be less hardship in any other United States judicial district.

As to service of process the basic consideration is to provide adequate notice to the defendant. *Tauza v. Susquehanna Coal Co.*, 220 N. Y. 259, 269. Here again, there is a possibility, albeit a lesser one, that the courts will consider different facts relevant to the adequacy of the notice received by an alien corporation, and a foreign corporation, respectively. But in this case, appellee received adequate notice under any standard.

There is present in this case no conflict between the necessities of effective enforcement of the anti-trust laws and the equally significant legal policy of suing defendants in a forum where it is fair to sue them and upon notice that is adequate. The conclusion that the standards set forth in *International Shoe Co. v. Washington*, 326 U. S. 310, apply here and have been met does not impair any legitimate right or appropriate interest of defendant, Scophony Limited. At the same time, however, the conclusion that these standards are applicable under Section 12 will remove confusion that has in the past hindered effective antitrust enforcement.

CONCLUSION

For the reasons previously stated, it is respectfully submitted that the judgment of the court below should be reversed.

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JANUARY 1948.

No. 41

IN THE

Supreme Court of the United States

October Term, 1947

THE UNITED STATES OF AMERICA,

Appellant,

—v.—

SCOPHONY CORPORATION OF AMERICA, GENERAL PRECISION
EQUIPMENT CORPORATION, TELEVISION PRODUCTIONS, INC.,
PARAMOUNT PICTURES, INC., SCOPHONY LIMITED, *et al.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF ON BEHALF OF APPELLEE
SCOPHONY, LIMITED.**

✓ **LEWIN FOSTER BLAIR,**
*Counsel for Appellee,
Scophony, Limited.*

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**BRIEF ON BEHALF OF APPELLEE
SCOPHONY, LIMITED.**

Opinion Below

The opinion of the court below (R. 58-63) is reported
in 69 F. Supp. 666.

Jurisdiction

The jurisdiction of this Court is invoked pursuant to
Section 2 of the Expediting Act of February 11, 1903,
32 Stat. §823, 15 U. S. C. §29, and Section 238 of the Judicial

Code, as amended by Act of February 13, 1925, 43 Stat. §§936, 938, 28 U. S. C. §345. Probable jurisdiction was noted on March 10, 1947 (R. 265).

Statement of the Case

This is a civil action brought by the United States for alleged violations of the Sherman Act (R. 3-43). The Government's appeal is taken from a judgment of the District Court for the Southern District of New York, quashing the service upon, and dismissing the Government's complaint against, appellee Scophony, Limited (hereinafter referred to as "Limited") (R. 66). The basis for the Court's decision was its holding that Limited was not at the time of such service subject to the process of that Court (R. 58-63).

The general background facts prior to 1943 are set forth in the Government's Brief, pages 3-16, and are not repeated here because they are not essential to the determination of the question on this appeal. There are, however, some important omissions of pertinent facts in the Government's Statement of the Case which compel a statement herein of the facts material to the issue before this Court.

Limited is a corporation organized under the laws of Great Britain with offices in the City of London, England (R. 4). The Record does not support the Government's contention that Limited is engaged in the United States in the business of patent development and exploitation (Gov't Brief, 25-27). As the Court below found (R. 60), Limited's business is that of manufacturing and selling television apparatus. Although it is the owner and licensor of inventions pertaining to television reception and transmission systems (R. 4, 60), since 1942, it has not owned any

American patents covering the transmission and television fields (R. 21).

Service of process upon Limited was attempted on December 20, 1945 by delivering the summons and complaint to one Arthur Levey in New York City (R. 43). Levey was then a director of Limited and the President and a director of Scopphony Corporation of America, a Delaware corporation (hereinafter referred to as "SCA") (R. 49, 50).

Service of process upon Limited was again attempted on April 5, 1946 by delivering the summons and complaint to one W. G. Elcock in his hotel in New York City (R. 44, 50). At that time Elcock was a director and a financial controller of Limited (R. 72). He had volunteered to come to this country on behalf of Limited for the purpose of trying to settle this anti-trust litigation and to resolve, if possible, the impasse in the internal affairs of SCA (R. 46). While in the United States the only things which he did on behalf of Limited were to attempt to adjust the differences between the stockholders of SCA and to dispose of Limited's stock interest in SCA (R. 47).

Neither on December 20, 1945, nor on April 5, 1946 (which, as aforesaid, are the dates of the attempted service of process) did Limited within the territorial limits of the United States:

(a) Maintain any office or agency or warehouses or other place of business;

(b) Own any real estate or other physical property;

(c) Have any employees;

(d) Employ any agents, other than counsel in this case and the aforesaid Elcock;

(e) Keep any telephone or telephone listing;

(f) Make any sales;

4

(g) Conduct any research; or

(h) Solicit any orders. (R. 46, 47).

On December 20, 1945 and again on April 5, 1946, the only relations which Limited had with the United States were:

(1) *Limited's stock ownership in SCA* (R. 52). This consisted of 625 shares of the outstanding 1000 shares of the Class "A" stock of SCA, which class was entitled to elect three-fifths of the corporation's Board of Directors as well as its President, Vice President and Treasurer (R. 49, 50).

(2) *Limited's contractual relations with SCA under its agreement with SCA dated August 11, 1942* (R. 19, 30). By this contract Limited divested itself through sale to SCA of all of its American and other Western Hemisphere patents relating to television, and it also sold to SCA the few pieces of equipment which it had in the United States (R. 21, 29). The consideration for this sale consisted of stock in SCA (R. 18), Fifteen Thousand Dollars in cash (R. 18), and certain undertakings in this contract on the part of SCA, including its agreement to pay to Limited a percentage of its net revenues derived from the sale or rental of the products or devices covered by the patents transferred by Limited to SCA (R. 24, 25). Both Limited and SCA agreed to supply each other with technical data and information relating to these patents and to the television field generally (R. 22, 23). Limited also contracted not to make, use or sell within the Western Hemisphere any apparatus embodying any of the patents (R. 26) and SCA similarly agreed with regard to the Eastern Hemisphere (R. 26).

In the performance of its undertakings under this contract Limited was not called upon to perform any act within the United States. And indeed, it is not surprising that the Record shows none.

(3) *Activities in this country by certain representatives of Limited seeking to resolve the impasse in the internal affairs of SCA* (R. 56, 255). At the instigation of Limited, certain individuals made efforts from time to time to investigate and straighten out the difficulties of SCA. Levey, whom Limited had caused to be elected to SCA's Board of Directors, kept Limited advised of his disputes with some of the other directors of SCA (R. 54). To aid and assist Levey in his efforts to settle these disputes, Limited, in March 1945, engaged the services of James Lawrence Fly, an American attorney (R. 56). In or about March 1945, Limited requested Robert Boothby, an English member of Parliament who was then in the United States, to investigate the impasse in the affairs of SCA and to recommend how it might be overcome (R. 56). In or about July 1945, Limited requested Commander Arthur Mallet, an Englishman who was then in the United States, to investigate the difficulties of SCA (R. 56). Later, John Sloan, an American attorney, was retained by Limited to look into SCA's position and to report (R. 105).

The Record does not show that Levey was representing Limited in any way in the United States at the time of the attempted service upon him (December 20, 1945). Instead it affirmatively shows that at that time he was not authorized to transact any business on behalf of Limited in this country (R. 47). Furthermore, it should be noted that the irrevocable power of attorney which Limited gave Levey on March 26, 1945

(Gov't Brief, 15) was a proxy to vote Limited's stock in SCA and that this power had expired several months prior to the date of attempted service upon him (R. 247, 252). The Record shows only one power of attorney given by Limited to anyone in the United States during the latter part of 1945 and that was one given to James Lawrence Fly which empowered him to act in the negotiations which he was conducting on behalf of Limited with the owners of the "B" stock of SCA (R. 56).

At the time service was attempted upon Elcock (April 5, 1946) he was in the United States for the specific purposes pointed out above. His activities on behalf of Limited were restricted solely to protecting Limited's interest in SCA, either by resolving its internal difficulties or by disposing of Limited's stock in that corporation (R. 47).

Question Presented

Whether an alien corporation is found within a Federal judicial district so that jurisdiction over its person may be obtained in a civil anti-trust suit when the corporation's only relations with the district, and indeed with the United States, were at the times of purported service

(1) Stock ownership in an American corporation, to which the alien corporation has sold, more than three years previously, all its American and other Western Hemisphere patents, as well as equipment located in the United States;

(2) An agreement with the American corporation containing mutual undertakings, but calling for no

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acts to be performed within the United States by the alien corporation; and

(3) Activities on the part of individual agents engaged in protecting the interests of the alien corporation in the American company by seeking to resolve an impasse in the latter's internal affairs?

Summary of Argument

Valid service of process was not made upon Limited because at the times of attempted service Limited was not found in the Southern District of New York or elsewhere in the United States, that is to say, Limited was not doing business in that District or anywhere else in this country.

The service of process requirements contained in Section 12 of the Clayton Act are the same as those which existed at the time of its enactment and have not been changed by subsequent judicial decisions. To be "found" as the Congress used that term in Section 12 of the Clayton Act, a corporation on which service is attempted must be doing business in accordance with the generally accepted meaning of the term as defined by the courts at the time of the statutory enactment. These standards adopted by Congress cannot be changed by resort to *International Shoe Company v. Washington*, 326 U. S. 310, a recent decision relating to the validity of service of process generally.

Even if the standards for determining validity of service set forth in the *International Shoe Company* case, *supra*, could be applied in the instant case, service of process against Limited would fail because Limited's contacts, ties and relations with the Southern District of New York fall short of satisfying those standards.

ARGUMENT

POINT I

Scophony, Limited, was not amenable to the process of the New York District Court because at the times of attempted service Limited was not doing business in that District or elsewhere in the United States.

No personal judgment against a defendant can, of course, be valid unless the court which renders it has first obtained jurisdiction over the person of such defendant, and such jurisdiction must be secured through the actual service of process upon the defendant in accordance with due process of law or through his voluntary appearance in the action. *McDonald v. Mabee*, 243 U. S. 90, 91.

In applying this principle to corporate defendants, this Court has consistently held that if a foreign corporation is not carrying on business within the jurisdiction at the time of attempted service it is not amenable to the process of a court of that jurisdiction. *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U. S. 333, 334; *Consolidated Textile Corp. v. Gregory*, 289 U. S. 85, 88.

In determining what constitutes doing business for purposes of jurisdiction, this Court has decided that the business done "must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the State or district where service is attempted." *People's Tobacco Co. v. American Tobacco Co.*, 246 U. S. 79, 87.

An application of these established legal principles to the facts of this case shows that at the times of attempted service Limited was not subject to the jurisdiction of the

District Court because it was not doing any business with in the Southern District of New York or any other Federal District. At these times Limited had no office, agency, warehouse or other place of business in the United States. It did not even have in this country a telephone or telephone listing. It did not own any real estate or physical property here. It had no employees; no orders were solicited on its behalf; no sales were made; and no research was conducted here (R. 46, 47).

As these facts are established beyond dispute, the Government puts forward (Gov't Brief, 22) for the first time in this case the novel theory that Limited was engaged at the times of attempted service of process in the business of the "exploitation and licensing of the Scopphony Inventions by and to others, rather than itself manufacturing or selling products embodying those inventions."

This argument completely overlooks the fact that in 1942 the patents which the Government refers to as the "Scopphony Patents" were sold and transferred by Limited to SCA (R. 21). Thereafter, Limited had no title to such patents. The Government's contention logically drives it to a disregard of the corporate entity of SCA. Such a conclusion is insupportable in law and in fact. As the Government refused (Gov't Brief, 18) to take the fatal step of arguing that the corporate veil be pierced, its contention regarding the business of patent exploitation by Limited must of necessity collapse.

The Government also argues that Limited undertook the exploitation of those inventions in partnership with General Precision Equipment Corporation and Television Productions, Inc. and that the medium through which the partnership exploited patents was their corporate instrumentality, SCA, controlled through their respective shareholdings (Gov't Brief, 25-27). This argument to have force

must shatter the corporate entity of SCA. And here again the Government is unwilling and unable to carry its argument to its logical conclusion.

If jurisdiction is to be found in this case, it must rest upon one or more of the following bases:

- (1) Limited's stock ownership in SCA;
- (2) Limited's contractual relations with SCA under its Agreement with SCA, dated August 11, 1942; or
- (3) Activities in this country by certain representatives of Limited seeking to resolve the impasse in the internal affairs of SCA.

These, at the times of purported service, were Limited's sole relations with the New York district and, indeed, with the United States. Under the authorities they are not sufficient to constitute a basis for jurisdiction.

(1) *Limited's stock ownership in SCA.* During 1945 and 1946, Limited owned 625 shares of SCA's Class "A" stock. Although such shareholdings gave Limited the right to elect three-fifths of SCA's Board of Directors as well as its President, Vice President and Treasurer, there is nothing in the Record to show that Limited at all times has treated SCA other than as a distinct corporate entity.

The Government concedes (Gov't Brief, 35) that by the time this proceeding was instituted and service attempted, SCA "was in actual fact not then acting as Limited's agent." As this Court held in *People's Tobacco Co. v. American Tobacco Co.*, *supra*, 87, "The fact that the company owned stock in the local subsidiary companies did not bring it into the State in the sense of transacting its own business there." See also, *Cannon Mfg. Co. v. Cudahy Packing Co.*,

supra, 334; *Consolidated Textile Corp. v. Gregory*, *supra*, 88.

(2) *Limited's contractual relations with SCA under its agreement with SCA, dated August 11, 1942.* This was the only executory agreement relating to the United States to which Limited was a party at the times of attempted service. It was not a party to the other contract of even date (R. 30-43). The parties signatory to that agreement were SCA, General Precision Equipment Corporation and Television Productions, Inc. The Agreement of July 31, 1942, to which Limited, General Precision Equipment Corporation and Television Productions, Inc. were parties (R. 14-18), (characterized by the Government as the "Master Agreement" [Gov't Brief, 7]) had been fully performed by the parties thereto more than three years before the times of purported service. In this connection it should be pointed out that the Government is in error in referring to "the execution by Limited of the Master Agreement of July 31st and of the two attached implementing agreements" (Gov't Brief, 27). The fact is that Limited, as pointed out above, executed only one and not both of the so-called implementing agreements.

The Agreement of August 11, 1942 between Limited and SCA imposes no contractual obligation upon Limited to do anything within the territorial boundaries of the United States. And proof is wholly lacking of any acts by Limited in this Country pursuant to this Agreement after 1942. The Government relies on the provisions of the Agreement

* Two cases [*Dobson v. Farbenfabriken*, 208 Fed. 125 (E. D. Pa., 1913); *U. S. v. U. S. Alkali Export Assn.*, unreported (S. D. N. Y., July 16, 1946) (Gov't Brief, 30, 31)] are clearly inapplicable. Both involved situations where an alien corporation had treated its American subsidiary as its agent in the United States.

(1) pertaining to the transmission and exchange of information relating to the use of the television inventions (Gov't Brief, 26), and (2) pertaining to payments by SCA to Limited, or by Limited to SCA, in connection with the sale or rental by either of them (or their respective licensees) of products or devices covered by their respective television patents (Gov't Brief, 26). The Record does not show the transmission of funds pursuant to these provisions either by SCA or by Limited. With regard to the exchange of information relating to the use of the television inventions, mailings by Limited from England could not be deemed to be acts of doing business in the United States. With regard to the transmission of funds pursuant to the provisions of this contract, the Record does not show that this was done either by SCA or by Limited, but even if Limited had transmitted funds from Great Britain to the United States, this could hardly be considered as making Limited present in the United States.*

(3) *Activities in this country of certain representatives of Limited.* This point, urged by the Government, is not well taken because, as the District Court pointed out (R. 62), such activities were not concerned with the ordinary business of Limited which was the manufacture and sale of television apparatus. The efforts of these representatives were directed towards the solution of the difficulties besetting SCA, and they were thus engaged as the District

* Rosenthal's shift of employment from Limited to SCA appears to be one of the trivia to which the Government clings (Gov't Brief, 33), but can scarcely be related to Limited's doing business in the United States. To the assertion that on several occasions SCA at Limited's request obtained material and equipment in the United States for shipment to Limited in England, the Court below held that this was not a frequent and common practice of SCA (R. 62), and furthermore the Record does not show that any such purchase or shipment took place on or about the times of attempted service.

Court found (R. 62) in protecting the interests of Limited in SCA.

Until March 1945, Limited relied almost wholly upon Levey to keep it informed of SCA's difficulties and looked to him to protect Limited's interests by finding a solution for them. In March 1945, James Lawrence Fly, an attorney in the United States, was retained by Limited and the other Class "A" shareholders of SCA to represent them in the controversy which had arisen with the Class "B" stockholders (R. 56). By power of attorney dated September 30, 1945, Fly was empowered to act on behalf of Limited in the negotiations that he was conducting with the owners of the "B" stock of SCA (R. 56).

Three other persons were requested by Limited to investigate and report on SCA's condition and the impasse which had brought about SCA's difficulties: In March 1945, Robert Boothby, an English member of Parliament who was then visiting the United States (R. 56); in July 1945, Commander Arthur Mallet, an Englishman temporarily in this country (R. 56); and in 1946, John Sloan, of the New York Bar (R. 105).

Finally, in March 1946, W. G. Elcock, a director and a financial comptroller of Limited, came to this country for the purpose of settling this anti-trust litigation and also in order to resolve the impasse in the internal affairs of SCA (R. 46). While here the only things he did were to attempt an adjustment of the differences between the stockholders of SCA and to endeavor to sell Limited's stock interest in SCA (R. 47).

In accordance with well-established principles of law, these activities in this country by such representatives of Limited did not subject that corporation to the jurisdiction of the District Court. In *Jefroy Silks, Inc. v. Papeteries Navarre*, 68 F. (2d) 707 (C. C. A. 2nd, 1934),

the defendant, a French corporation, had sent its representative, one Dukers, to New York to sell its product. He made some sales and then returned to France after the venture proved unsuccessful. Service of process was attempted on an individual by the name of Batchelor who was designated by the defendant as its representative. The Circuit Court of Appeals for the Second Circuit affirmed the order vacating the service, and stated, at page 708:

"Without a place of business in New York, without being engaged regularly in carrying on business there, and without any license to do business there, it cannot be inferred that this French corporation was within the jurisdiction simply because Batchelor was acting for it in the attempt to adjust a few accounts left over from the transactions of Dukers. He was its representative only for that limited purpose and was the corporation in New York in no other capacity. Davega, Inc. v. Lincoln Furniture Mfg. Co., Inc., (C. C. A.) 29 F. (2d) 164; Rosenberg Bros. & Co., Inc. v. Curtis Brown Co., 260 U. S. 516, 43 S. Ct. 170, 67 L. Ed. 372; Philadelphia & Reading Ry. Co. v. McKibbin, 243 U. S. 264, 37 S. Ct. 280, 61 L. Ed. 710; People's Tobacco Co. v. American Tobacco Co., 246 U. S. 79, 38 S. Ct. 233, 62 L. Ed. 587, Ann. Cas. 1918C, 537."

The Government states as a proposition that

"A foreign corporation's involvement in disputes and negotiations for their settlement, such as these, have long been recognized by the courts as a basis for deciding that the foreign corporation was 'found' within the jurisdiction so that it could properly be sued and served with process therein." (Gov't Brief, 37.)

The cases cited in support of this statement are inapplicable to the instant case and, indeed, do not even support the statement as made. *Hutchinson v. Chase & Gilbert, Inc.*, 45 F. (2d) 139 (C. C. A. 2nd, 1930) involved the effectiveness of service of process upon an officer of a Massachusetts corporation who was temporarily within the Southern District. The Court held that the Massachusetts corporation was not subject to the process of the Federal court for that district. In his opinion for the court, Judge Learned Hand said, at page 142:

"In the case at bar, the defendant has never done any continuous business in New York. It has come here on occasion, when it found likely opportunities to buy control in a company which would fit in with its general plans."

St. Louis S. W. Ry. Co. of Texas v. Alexander, 227 U. S. 218, mentioned in the *Hutchinson* case, *supra*, 142, is not in point. The parent and subsidiary railroad companies had a joint office in New York and employed a freight agent there who was authorized to handle claims against both companies. A shipper over the lines of the subsidiary recovered judgment against that company for damage to goods shipped by him. The agent undertook to act for and represent the subsidiary, negotiate for it and in its behalf declined to adjust the claim in question. The ordinary business of the corporation for which the agent was maintained was, in part, the settlement of disputes. That, obviously, is not the case here.

In *Geo. Wm. Bentley Co. v. Chivers & Sons, Ltd.*, 215 Fed. 959 (S. D. N. Y., 1913), the real question before the Court was whether or not a proper representative of the company was served with process. There was little question of the

fact that the company was doing business in New York, for the Court said, at page 960:

"That Chivers & Sons, Limited, was doing business in the state of New York through its agent, the plaintiff, can hardly be disputed."

The plaintiff had a ten year contract conferring upon him the exclusive right to sell the products of the defendant.

The two insurance cases, *Mutual Life Insurance Co. v. Spratley*, 172 U. S. 602; *Pennsylvania Lumbermen's Mutual Fire Ins. Co. v. Meyer*, 197 U. S. 407, are not cognate authorities. In each, an insurance company had a large number of policies outstanding in the jurisdiction involved. This Court recognized that the very nature of an insurance business involved the payment and settlement of claims and that negotiations to that end by insurance adjusters were part and parcel of the ordinary business of an insurance company.

POINT II

The service of process requirements contained in Section 12 of the Clayton Act are the same as those which existed at the time of its enactment and are not changed by any subsequent judicial decision relating to the validity of service of process generally.

The jurisdiction of federal courts in anti-trust suits against corporations is governed by Section 12 of the Clayton Act, which was enacted in 1914 and which reads as follows:

"Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in

the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found." (38 Stat. §736, 15 U. S. C. §220)*

It will be noted that this statute divides into two parts. The first is a venue provision, and the second is a provision dealing with the service of process. Prior to the enactment of this legislation, anti-trust suits against corporations could be brought only in the judicial districts where such corporations were incorporated or were "found". The purpose of this statute was to liberalize from the Government's point of view the rule as to venue and to permit an anti-trust suit to be brought against a corporation not only, as theretofore, in the judicial district where it was incorporated or "found," but also in any district where it might be merely transacting business, provided, however, that in that event service was actually effected either in the district of incorporation or in a district in which it was "found". *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U. S. 359, 372-373.

A foreign corporation may "transact business" in the usual understanding of these words but may still not be "found" in the judicial district where its business was

* The Government has suggested in a footnote on page 39 of its Brief that Section 12 of the Clayton Act may not apply to alien corporations, but it does not press the point. This reticence is understandable because of the absence of any authority directly supporting such a contention. No reason suggests itself why Congress would enact a statute which was intended, from the Government's viewpoint, to liberalize the former rules governing venue in anti-trust litigation only in so far as suits against domestic corporations were concerned and would at the same time keep in force the more stringent rule with respect to alien corporations. No such incongruous result could have been intended.

transacted. To establish venue a plaintiff need only show that suit has been brought in a district in which the defendant corporation is transacting business. This was set forth in *Eastman Kodak Co. v. Southern Photo Materials Co.*, *supra*, in which this Court stated, at page 374:

"To construe the words 'or transacts business' as adding nothing of substance to the meaning of the words 'or is found,' as used in the Anti-Trust Act, and as still requiring that the suit be brought in a district in which the corporation resides or is 'found,' would to that extent defeat the plain purpose of this section and leave no occasion for the provision that the process might be served in a district in which the corporation resides or is found. And we find nothing in the legislative proceedings leading to its enactment which requires or justifies such a construction."

The authorities establish the principle that to be "found," as the Congress used that term in this Section of the Clayton Act, the corporation on which service is attempted must be "doing business" in accordance with the generally accepted meaning of that term as defined by the courts at the time of this statutory enactment. *Green v. Chicago, Burlington & Quincy Ry.*, 205 U. S. 530; *People's Tobacco Co. v. American Tobacco Co.*, *supra*.

In *Haskell v. Aluminum Co. of America*, 14 F. (2d) 864, (D. Mass., 1926), the Court stated, at page 867:

"It seems to be too firmly established to admit of argument that in statutes affecting venue the word 'found' has been given a definite legal significance when applied to foreign corporations, and it will be presumed that, when Congress enacted the Clayton

Act, it used the word as defined by the courts. *Standard Oil Co. v. United States*, 221 U. S. 1 at 59 • • • •

The Government contends in Point II of its Brief, at pages 38-47, that *International Shoe Company v. Washington*, 326 U. S. 310, has established new standards for determining the validity of service of process upon a corporation. The Government further contends that these standards apply to service of process in an anti-trust suit brought under Section 12 of the Clayton Act.

This argument is untenable. Section 12 of the Clayton Act has its own standards for determining validity of service of process. These were set at the time of Congressional enactment by incorporating in the statute, through the use of the word "found," the legal concepts of doing business which the courts had then formulated. The standards thus adopted by Congress in this statute cannot be changed by resort to a subsequent court decision relating to the validity of service of process generally.

• • • • •

Even if the standards for determining the validity of service set forth in the *International Shoe Company* case, *supra*, could be applied in the instant case, service of process against Limited would fail because Limited's contacts, ties and relations with the Southern District of New York fall short of satisfying those standards.

One of the indispensable standards set by the decision of this Court in the *International Shoe Company* case was the requirement that a foreign corporation could be validly reached by process only if it was at that time conducting activities within the jurisdictional limits of the court. An additional standard was that such activities should be neither sporadic nor casual,

As shown in Point I of this Brief (see *supra*, pp. 10-16), Limited was not engaged in activities in the Southern Dis-

trict of New York of the type which would satisfy the standards established in the *International Shoe Company* case. Limited was not conducting activities of a business nature in the Southern District of New York, unless the activities of its representatives seeking to resolve the internal difficulties of SCA could be so considered. But even then these activities were sporadic and do not satisfy the test of "presence" discussed by Mr. Chief Justice Stone, at page 317:

"... it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. *St. Clair v. Cox*, *supra*, 359, 360; *Old Wayne Life Assn. v. McDonough*, 204 U. S. 8, 21; *Frene v. Louisville Cement Co.*, *supra*, 515, and cases cited. To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process."

CONCLUSION

It is therefore respectfully submitted that the judgment of the United States District Court for the Southern District of New York was correct and should be affirmed.

Respectfully submitted,

EDWIN FOSTER BLAIR,
Counsel for Appellee,
Scophony, Limited.

SUPREME COURT OF THE UNITED STATES

No. 41.—OCTOBER TERM, 1947.

The United States of America,
Appellant,

v.

Scophony Corporation of America,
General Precision Equipment
Corporation, Television Produc-
tions, Inc., Paramount Pictures,
Inc., Scophony Limited, et al.

Appeal from the Dis-
trict Court of the
United States for
the Southern Dis-
trict of New York.

[April 26, 1948.]

MR. JUSTICE RUTLEDGE delivered the opinion of the Court.

The appellee Scophony, Limited is a British corporation which has its offices and principal place of business in London, England. The question is whether that company "transacted business" and was "found" within the Southern District of New York under § 12 of the Clayton Act,¹ so that it could be sued and served there in a civil proceeding charging violation of §§ 1 and 2 of the Sherman Act. 26 Stat. 209, 50 Stat. 693, 15 U. S. C. §§ 1, 2. The violations stated were that Scophony and the other defendants² had monopolized, attempted to monopolize,

¹ "Sec. 12. That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found." 38 Stat. 736, 15 U. S. C. § 22.

² The suit was instituted against Scophony, Limited (designated in this opinion as "Scophony"), Scophony Corporation of America (designated "American Scophony"), General Precision Equipment Corporation (designated "General Precision"), Television Produc-

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and conspired to restrain and monopolize interstate and foreign commerce in products, patents and inventions useful in television and allied industries. The cause is here on direct appeal³ from an order of the District Court granting Scophony's motion to quash the service of process and dismiss the complaint as to it. 69 F. Supp. 666.

Scophony manufactures and sells television apparatus and is the owner and licensor of inventions and patents covering television reception and transmission.⁴ With the outbreak of the European War in 1939, the British Broadcasting Corporation stopped television broadcasting. Consequently it became impossible for Scophony to continue in the commercial development, manufacture and sale of television equipment in England. It therefore sent personnel to the United States, opened an office in New York City, and began demonstrations of its product and other activities preliminary to establishing a manufacturing and selling business in this country.

Late in 1941 Scophony found itself in financial distress, in part because of restrictions imposed by the British Government on the export of currency. It became imperative that new capital from American sources be found

tions, Inc. (designated "Productions"), Paramount Pictures, Inc. (designated "Paramount"), and three individual defendants, Arthur Levey and the presidents of General Precision and Productions. The corporations, except Scophony, are incorporated in the United States.

³Pursuant to § 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. § 29, and § 238 of the Judicial Code, 43 Stat. 938, 28 U. S. C. § 345.

⁴The inventions and patents in the main relate to two systems of television transmission and reception, one known as the "supersonic" system and the other as the "skiatron" system. We shall at times refer to the present and future patents, processes, designs, technical data, etc., relating to these two systems as the Scophony inventions.

A third system, the cathode-fluorescent system, was developed early in this century and is the principal method of television transmission and reception used in the United States today.

for the enterprise. Accordingly, Arthur Levey, a director of Scophony and one of its founders, undertook negotiations in New York with American motion picture and television interests, including Paramount and General Precision. They culminated in the execution of three interlacing contracts, the so-called master agreement of July 31, 1942, and two supplemental agreements of August 11, 1942. Copies of the latter had been attached to the master agreement, which provided for their later execution, and they when executed in effect carried out its terms. The alleged violations of the Sherman Act center around these agreements.

The master agreement was executed by Scophony, William George Elcock, as mortgagee of all of Scophony's assets, General Precision, and Productions, the latter a wholly owned subsidiary of Paramount. It provided for the formation of a new Delaware corporation, American Scophony, with an authorized capital stock of 1,000 Class "A" shares and a like number of Class "B" shares. Scophony and individuals interested in it⁵ were to be given the Class "A" shares. Under the agreement, ownership of those shares conferred the right to elect three of American Scophony's five directors and its president, vice president and treasurer. The Class "B" shares were allotted to General Precision and Productions. By virtue of such ownership those two corporations were entitled to name the remaining two directors and the secretary and assistant secretary of American Scophony. Levey was named in the agreement as the president and a director of the new corporation.

The master agreement set forth the general desire of the parties to promote the utilization of the Scophony inventions "particularly in the United States of America

⁵ An agreement of February 4, 1943, amended the original agreement so as to give two-thirds of the "A" shares to Scophony, the remainder to individuals.

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and generally in the Western Hemisphere." It then stated that American Scophony had been organized "as a means therefor." Scophony agreed to transfer all its television equipment then in the United States to American Scophony and to enter into the first supplemental agreement. Scophony, with the other parties, also undertook to cause American Scophony to enter into both supplemental agreements. For the "B" stock in American Scophony and other rights acquired, General Precision and Productions agreed to enter into the second supplemental agreement and to pay specified sums in cash to Scophony or for its benefit in liquidation of listed obligations.

Pursuant to the master agreement's terms, the first supplemental agreement was executed by Scophony, Elcock, as mortgagee of its assets, and American Scophony; the other, by American Scophony, General Precision, and Productions. For present purposes it is necessary to set forth only the general effect of the agreements taken together. Scophony transferred to American Scophony not only all of its equipment in the United States, but also all patents and other interests in the Scophony inventions within the Western Hemisphere. General Precision and Productions were granted exclusive licenses under American Scophony's patents. They agreed to pay royalties on the products produced under the licenses and American Scophony undertook to transmit fifty per cent of such royalties to Scophony. American Scophony gave Scophony an exclusive sublicense for the Eastern Hemisphere on a royalty basis under all patents licensed to American Scophony by General Precision and Productions. Provision was also made for the interchange of technical data and information respecting the Scophony inventions. Finally, it was agreed that Scophony would not market any product involving the Scophony inventions in the Western Hemisphere and that General Pre-

cision and Productions would not export any such product to the Eastern Hemisphere.*

This rather complex plan soon fell of its own weight. Starting in 1943, an impasse developed in the affairs of American Scophony. It stemmed from the failure and unwillingness of General Precision and Productions to exploit the Scophony inventions themselves and their refusal to modify the agreements to permit the licensing of other American firms under the inventions. Several manufacturers expressed an interest in obtaining licenses. But in each instance the directors representing the American interests holding the Class "B" shares were unwilling to approve the necessary modifications in the existing arrangements. In July, 1945, the directors representing the "B" interests resigned. This made it impossible for American Scophony to transact business, since charter and by-law provisions adopted pursuant to the master and supplemental agreements required the presence of at least one Class "B" director for a quorum. Adding to the difficulties were American Scophony's shortage of funds and the apparent reluctance of the American interests to cooperate in efforts to place American Scophony on firmer financial footing. American Scophony's affairs were further complicated by the institution of the present antitrust proceeding on December 18, 1945.

Levey kept Scophony advised of developments in the dispute between the "A" and "B" factions and otherwise

*The complaint alleged that the effects of the agreements and understandings were to create a territorial division of the manufacture and sale of television products, assigning the Eastern Hemisphere to Scophony and the Western Hemisphere to General Precision and Productions; to suppress and restrain competition in the manufacture and sale of television equipment, both in the domestic and in the export markets; and to give General Precision and Productions monopoly power over the Scophony inventions which enabled them to suppress their exploitation and deprive others of their use.

made progress reports to Scophony on its interests in the United States. As the impasse heightened, other individuals were authorized by Scophony to act in its behalf in the United States.⁷ Service of process as to Scophony was made first on Levey in New York City on December 20, 1945.⁸

On April 5, 1946, a summons and a copy of the complaint directed to Scophony were also served on Elcock in New York City. He was a dominant figure in Scophony. He arrived in this country in March, 1946, with the mission of investigating and ending the impasse and disposing of Scophony's interest in American Scophony. Elcock not only was mortgagee of Scophony's assets by virtue of having made a large loan to the company. He was also its financial comptroller and a member of its board. At the time of service on him, he held a comprehensive power of attorney, irrevocable until March, 1947, giving him complete power to act with regard to Scophony's interests in the United States, including those in American Scophony.⁹

The District Court, in granting the motion to quash service and dismiss the complaint as to Scophony, held

⁷ These included at various times two American attorneys, a member of the British Parliament, and an English officer.

⁸ Levey immediately informed Scophony in England of this action and advised it to designate appropriate counsel. On December 21, 1945, he sent a copy of the complaint to Scophony by airmail.

⁹ The power of attorney set forth Scophony's desire to appoint Elcock to act "and bind the Company in all or any matters affecting the Company's interests in the United States" It then authorized Elcock to institute and prosecute all proceedings necessary to conserve Scophony's interests; to defend or compromise any suits brought against Scophony; to settle accounts; to engage or dismiss subagents; to borrow money; to dispose of any and all of Scophony's property and interests in the United States; and "generally to represent the Company in the United States of America in all matters in any way affecting or pertaining to the Company"

that it was not "found" in the Southern District of New York within the meaning of § 12. The court rejected the contention that Scophony was within the jurisdiction by reason of the activities of its agents. It concluded that none of those activities related to Scophony's ordinary business of manufacturing, selling and licensing television apparatus, but all were confined to protecting Scophony's interest in American Scophony. It also found that the conduct of American Scophony did not serve to bring Scophony within the jurisdiction. 69 F. Supp. 666.

I.

Section 12 of the Clayton Act has two functions, first, to fix the venue for antitrust suits against corporations; second, to determine where process in such suits may be served. Venue may be had "not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or *transacts business*." And all process may be served "in the district of which it is an inhabitant, or wherever it may be found." (Emphasis added.)

A plain and literal reading of the section's words gives it deceptively simple appearance. The source of trouble lies in the use of verbs descriptive of the behavior of human beings to describe that of entities characterized by Chief Justice Marshall as "artificial . . . , invisible, intangible, and existing only in contemplation of law." *Dartmouth College v. Woodward*, 4 Wheat. 518, 636.¹⁰

¹⁰ More than once Marshall had difficulty in transferring to corporations or other institutions legal conceptions and relations shaped in nomenclature and in fact from normative evolution in relation to persons of flesh and blood.

See, e. g., *Bank v. Deveaux*, 5 Cranch 61, where he was unable to adapt the concept of corporate "inhabitaney," applied in decisions he cited, for fitting the corporation into the constitutional scheme of

The process of translating group or institutional relations in terms of individual ones, and so keeping them distinct from the nongroup relations of the people whose group rights are thus integrated, is perennial, not only because the law's norm is so much the individual man, but also because the continuing evolution of institutions more and more compels fitting them into individualistically conceived legal patterns. Perhaps in no other field have the vagaries of this process been exemplified more or more often than in the determination of matters of jurisdiction, venue and liability to service of process in our federal system.¹¹ It has gone on from *Bank v. Deveau*, 5 Cranch 61, and *Baptist Association v. Hart's Executors*, 4 Wheat. 1, to *International Shoe Co. v. Washington*, 326 U. S. 310, and now this case.¹²

The translation, or rather the necessity for it, permeates every significant word of § 12, not wholly excluding "or transacts business." If the statutory slate were clean, one might readily conclude that the words "inhabitant" and "found" would have the same meaning for locating both

diversity jurisdiction. His individualistic solution brought difficulties which lasted for decades. See Henderson, *The Position of Foreign Corporations in American Constitutional Law* 50-76; Harris, *A Corporation As a Citizen*, 1 Va. L. Rev. 507. Cf. *Baptist Association v. Hart's Executors*, 4 Wheat. 1.

¹¹ See, e. g., Cahill, *Jurisdiction over Foreign Corporations and Individuals Who Carry on Business within the Territory*, 30 Harv. L. Rev. 676; Scott, *Jurisdiction over Nonresidents Doing Business within a State*, 32 Harv. L. Rev. 871; Bullington, *Jurisdiction over Foreign Corporations*, 6 N. C. L. Rev. 147; Note, *What Constitutes Doing Business by a Foreign Corporation for Purposes of Jurisdiction*, 29 Col. L. Rev. 187.

¹² The very federalism of our structure magnifies the problem, by multiplying state and other governmental boundaries across which corporate activity runs with the greatest freedom. The problem arises on constitutional as well as statutory and common-law levels. Cf. *International Shoe Co. v. Washington*, 326 U. S. 310; *Puerto Rico v. Russell & Co.*, 288 U. S. 476.

venue and the proper place for serving process. But even so, each of those terms and indeed the term "transacts business" would have to be given specific content actually descriptive of corporate events taking place within specified areas. Because all corporate action must be vicarious, that content could be determined only by an act of judgment which selects and attributes to the corporation, from the mass of activity done or purporting to be done on its behalf, those acts of individuals which are relevant for the particular statutory purposes and policies in hand.

The statutory slate, however, is neither entirely new nor clean. Both legislative and judicial hands have written upon it. The writing is meandering, unclear in part, and partly erased. But it cannot be disregarded. What is legible must furnish guidance to decision. We deal here with a problem of statutory construction, not one of constitutional import.¹³ Nor do we have any question of the exercise of Congress' power to its farthest limit. The issue is simply how far Congress meant to go, and specifically whether it intended to create venue and liability to service of process through the occurrence within a district of the kinds of acts done here on Scophony's behalf.

Section 12 of the Clayton Act is an enlargement of § 7 of the Sherman Anti-Trust Act. *Eastman Co. v. Southern Photo Co.*, 273 U. S. 359. The earlier statute

¹³ Appellee makes no suggestion of a constitutional issue. The Government, however, suggests that, in view of our recent decision in *International Shoe Co. v. Washington*, 326 U. S. 310, which was concerned with the jurisdiction of a state over a foreign corporation for purposes of suit and service of process, and in view of aspects of similarity between that problem and the one now presented, we extend to this case and to § 12 the criteria there formulated and applied. There is no necessity for doing so. The facts of the two cases are considerably different and, as we have said, we are not concerned here with finding the utmost reach of Congress' power.

provided for suit in the district in which the defendant "resides or is found." 26 Stat. 210. That wording controlled for both venue and fixing the places for service of process.

We do not stop to review the decisions construing § 7 and similar statutes, cf. *Suttle v. Reich Bros.*, 333 U. S. 163; see *International Shoe Co. v. Washington*, *supra*, at 317-319, except to refer to *People's Tobacco Co. v. American Tobacco Co.*, 246 U. S. 79. —There the foreign corporation was sued in a district in which it did not "reside." Because the Court found that the company had withdrawn from the state in which the district was located and had revoked the authority of its principal agents there, it held that the defendant was not "found" in the district, although certain corporate activities continued.

The conventional rationalization applied equated "found" in sequence to "presence," to "doing business by its agents there," to "of a character warranting inference of subjection to the local jurisdiction." ¹⁴ The facts that the company continued to advertise its goods in the state and district, to make interstate sales to jobbers there, to send in drummers who solicited retail orders to be turned over to the jobbers, and finally to own stock in local subsidiaries, were held not to constitute the sort of "doing business" warranting the inference of subjection to the local jurisdiction for the statute's purposes. *International Harvester v. Kentucky*, 234 U. S. 579, was narrowly distinguished. 246 U. S. at 87.

¹⁴ The Court said: "The general rule deducible from all our decisions is that the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the State or district where service is attempted. *Philadelphia & Reading Ry. Co. v. McKibbin*, 243 U. S. 264; *St. Louis Southwestern Ry. Co. v. Alexander*, 227 U. S. 218, 226." 246 U. S. 79, 87.

The suit in the *People's Tobacco* case was begun in 1912, but the decision was not rendered until 1918. Meanwhile, in 1914, Congress had enacted the Clayton Act, including § 12. The following year the *Eastman* case, *supra*, was begun in the Northern District of Georgia. Process issued and was served under § 12 on the defendant, a New York corporation, at its principal place of business in Rochester. In 1927 this Court sustained both the venue and the service, as against objections that § 12 had not broadened § 7 of the Sherman Act, but merely made explicit what had been decided under it.¹⁵

The argument was certainly plausible, but for the fact that it made the addition of "or transacts business" to "inhabitant" and "found" in § 12 redundant and meaningless. The Court refused to accept the argument, because doing so would have defeated the plain remedial purpose of § 12.¹⁶ That section was enacted, it held, to enlarge the jurisdiction given by § 7 of the Sherman Act over corporations by adding those words, "so as to estab-

¹⁵ Counsel for the defendant equated the words "inhabitant" and "found" of § 12 to "resides or is found" of § 7 of the Sherman Act. They then went on to argue that the addition of "or transacts business" in the venue clause of § 12 did not broaden the section, but merely made explicit what the Court had already decided under the earlier statute. 273 U. S. at 361. This, because "or transacts business" was said to be nothing more than "carrying on business," which was the content the Court had given to "is found" in § 7, by the *People's Tobacco* case and others.

¹⁶ Rather, the Court said, the section supplements "the remedial provision of the Anti-Trust Act for the redress of injuries resulting from illegal restraints upon interstate trade, by relieving the injured person from the necessity of resorting for the redress of wrongs committed by a non-resident corporation, to a district, however distant, in which it resides or may be 'found'—often an insuperable obstacle—and enabling him to institute the suit in a district, frequently that of his own residence, in which the corporation in fact transacts business, and bring it before the court by the service of process in a district in which it resides or may be 'found.'" 273 U. S. 359, 373. (Emphasis added.)

lish the venue of such a suit not only, as theretofore, in a district in which the corporation resides or is 'found,' but also in any district in which it 'transacts business'—although neither residing nor 'found' therein—in which case the process may be issued to and served in a district in which the corporation either resides or is 'found.' 273 U. S. at 372.¹⁷

This construction gave the words "transacts business" a much broader meaning for establishing venue than the concept of "carrying on business" denoted by "found" under the preexisting statute and decisions. The scope of the addition was indicated by the statement "that a corporation is engaged in transacting business in a district . . . if in fact, in the ordinary and usual sense, it 'transacts business' therein of any substantial character." *Id.* at 373. (Emphasis added.)

In other words, for venue purposes, the Court sloughed off the highly technical distinctions theretofore glossed upon "found" for filling that term with particularized meaning, or emptying it, under the translation of "carrying on business." In their stead it substituted the practical and broader business conception of engaging in any substantial business operations. Cf. *Frene v. Louisville Cement Co.*, 134 F. 2d 511; *International Shoe Co. v. Washington*, *supra*. Refinements such as previously were made under the "mere solicitation" and "solicitation plus" criteria, cf. *Frene v. Louisville Cement Co.*, *supra*, and like those drawn, e. g., between the *People's Tobacco* and *International Harvester* cases, *supra*, were no longer determinative. The practical, everyday business or commercial concept of doing or carrying on business "of any substantial character" became the test of venue.

Applying it, the Court stated that "manifestly" the Eastman Company was not "present" in the Georgia district under the earlier tests of § 7 of the Sherman Act,

¹⁷ See also note 16.

either for the purpose of venue or as being amenable to service of process. P. 371. It thus aligned the case under those tests with the *People's Tobacco* decision rather than the *International Harvester* one. But, under the broader room given by § 12, venue was held to have been established.¹⁸

Thus, by substituting practical, business conceptions for the previous hair-splitting legal technicalities en-crusted upon the "found"- "present"- "carrying-on-business" sequence, the Court yielded to and made effective Congress' remedial purpose. Thereby it relieved persons injured through corporate violations of the antitrust laws from the "often insuperable obstacle" of resorting to distant forums for redress of wrongs done in the places of their business or residence. A foreign corporation no longer could come to a district, perpetrate there the injuries outlawed, and then by retreating or even without retreating,¹⁹ to its headquarters defeat or delay the retribution due.

¹⁸ The concrete facts held to sustain the venue were that the Eastman Company was engaged "not only in selling and shipping its goods to dealers within the Georgia district, but also in soliciting orders therein through its salesmen and promoting the demand for its goods through its demonstrators for the purpose of increasing its sales . . ." 273 U. S. at 374.

The Court also expressly stated that, in contrast to prior limitations, the company was "none the less engaged in transacting business . . . because of the fact that such business may be entirely interstate in character and be transacted by agents who do not reside within the district," referring in this connection to *International Harvester v. Kentucky*, 234 U. S. 579, 587, and *Davis v. Farmers Co-operative Co.*, 262 U. S. 312, 316. 273 U. S. 359, 373.

¹⁹ I. e., by artful arrangement of agents' authority, or of their comings and goings, or of the geography of minute incidents in contracting. Cf. *People's Tobacco Co. v. American Tobacco Co.*, 246 U. S. 79. Such artifice saw its day end for creating substantive liability through a course of dealing contrary to the antitrust statutes, but without thereby also creating venue to enforce it, with the advent of § 12.

With venue established under the new and broader approach, the *Eastman* case presented no problem regarding the service of process, except possibly for the ruling that process might run to another district than the one in which suit was brought. 273 U. S. at 374. For by whatever test, whether of the old § 7 or the new § 12, the service was good. As we have noted, the process had been directed to and served in the district where the Eastman Company was an "inhabitant."²⁰ There was therefore no necessity for ruling upon the meaning of "found" as relating to any other district. Any such ruling necessarily could be no more than dictum, since no such issue was presented by the facts.

Nevertheless, for service of process § 12 had specified "the district of which it is an inhabitant, or wherever it may be found" without adding "or transacts business," as was done in the venue clause. Accordingly the Court took account of this difference and went on to indicate that for purposes of liability to service the section merely carried forward the preexisting law, so that in some situations service in a district would not be valid, even though venue were clearly established under § 12.²¹

But regardless of the pronouncement's effect, the decision, by resolving the venue problem, substantially removed the serious obstacles and practical immunities to

²⁰ As has been stated, the company was incorporated in New York and had its principal office and place of business in Rochester.

²¹ Although difference of that sort may appear to be generally incongruous, since ordinarily it would seem that susceptibility to suit in a district should be accompanied by amenability to process there, such things of course are for Congress' determination as matters of policy relating to the scope and correlation, or lack of it, of venue and service provisions. There is certainly no constitutional requirement that the two be coextensive. And to support the dictum, if it were now necessary to rule on the matter, considerations beyond the verbal difference to which the *Eastman* opinion pointed might be stated.

suit which had grown up under § 7 of the Sherman Act, in by far the larger number of antitrust cases, *i. e.*, for those not involving companies incorporated outside the United States. In them the fact that service may be dubious in the district of suit and can be assured only by causing process to run to another district, as in the *Eastman* case, presents no such obstacle to bringing and maintaining the suit as existed prior to § 12. The necessity, if it is that, for directing process to another district, creates at most some slight inconvenience and additional expense.

II.

In this case, however, we deal with a company incorporated outside the United States. But there can be no question of the existence of "jurisdiction," in the sense of venue under § 12, over Scophony in the Southern District of New York. To say that on the facts presented Scophony transacted no business "of any substantial character" there during the period covered by institution of the suit and the times of serving process would be to disregard the practical, nontechnical, business standard supplied by "or, transacts business" in the venue provision. It would be also to ignore the fact that Scophony then and there was carrying on largely, if not exclusively, the only business in which it could engage at the time.

Scophony's operations in New York were a continuous course of business before and throughout the period in question here. They consisted in strenuous efforts not simply to save an American "investment," as is urged, but to salvage and resuscitate Scophony's whole enterprise from the disasters brought upon it by the war. As with such efforts generally, changes in method and immediate objective took place as each one tried in turn failed to work out. But those changes brought none in ultimate objective, namely, to find a mode of saving and profitably

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exploiting the Scophony inventions; and none in the intensity or continuity with which that object was pursued in New York.

First was the phase of attempting to set up in this country as manufacturer and seller of television equipment. When that failed, the company turned to licensing and exploiting its patents by other means. This was done through the complicated arrangements for what practically if not also technically was a joint adventure with other companies. That project was carried out not merely through corporate forms and arrangements but by contracts binding the participating companies to the common enterprise, as well as the special medium of executing it, American Scophony. In this each corporate participant had its special functions, controls and restrictions created in part by share ownership in American Scophony, but also in important respects by contract both beyond the stock controls and dictating their character.²² Finally, as the affairs of the keystone of the structure, American Scophony, came to and continued in stalemate, the immediate objective shifted once more, to getting out of the trap. Again the shift was in direct and constant pursuit of Scophony's primary and continuing object, to find a way to save and to exploit its patents.

²² *E. g.* the hemispheric division of territories between the British and American interests; the exclusive licensing agreements which prevented Scophony from granting licenses to interested American companies; and the arrangements for the interchange of technical information were contractual, not charter limitations on corporate powers. The particular corporate medium used, American Scophony, and the refinements in its charter and by-laws giving General Precision and Productions an effective veto power over its operations were themselves aspects of the contractual undertakings embodied in the master agreement and the two supplemental agreements. The master agreement also designated the persons to become officers and directors of American Scophony, as representatives of both the British and the American interests.

This is a story of business in trouble, even desperate. We may have sympathy for the company's plight. But it does not follow that such continuing, intensive activities to save the business and put it on a normal course, even though shifting as they did in the successive winds that blew, did not constitute "transacting business" of "any substantial character." Nor can we say that any of the major shifts in tacking toward the ultimate end stopped or interrupted the course of the company's business activity. At no time was the drive toward achieving its basic objects suspended.

Appellee would avoid this view and its consequences by taking an entirely different conception of what took place. It emphasizes that Scophony's corporate objects, as stated in its charter, were to manufacture and sell television equipment. Hence it concludes that when all New York activity directly pointing to that end ceased, and was followed by the phase of seeking to exploit the patents through the arrangements centering around American Scophony, the British company ceased to be engaged in promoting its corporate objects and thus in carrying on or doing business in New York for the relevant statutory purposes. From then on, it is claimed, Scophony became concerned solely with creating and protecting an "investment," namely, in American Scophony's shares. Nor did Scophony resume the doing of business when that effort also failed and the final stage of seeking to break the impasse arrived, because manufacturing and sale of equipment were not revived.

To this view of the sequence of events appellee then seeks to apply this Court's decisions interpreting "found" under § 7 and similar requirements in application to manufacturing and selling companies,²³ and also the like

²³ E.g., *Cannon Mfg. Co. v. Cudahy Co.*, 267 U. S. 333; *Consolidated Textile Corp. v. Gregory*, 289 U. S. 85; *People's Tobacco Co. v. American Tobacco Co.*, 246 U. S. 79.

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Eastman dictum concerning § 12. In doing this it seeks especially to invalidate the service by casting up from those decisions a check list of specific and often minor incidents of that sort of business done or not done as relevant to whether business is being carried on, and then matching against the list Scophony's New York activities as of the times of service.²⁴

Obviously this view of the facts and of the determinative legal approach is at wide variance from the ones we have taken in dealing with the question of venue. But we do not find it necessary, in order to reject it for purposes of sustaining the service, to consider whether the process clause of § 12 should be given scope beyond that indicated by the *Eastman* dictum. For in any event we think that appellee and the District Court have misconceived the effects of the facts and of the decisions on which they rely, for determining the validity of the service in this case.

Certainly appellee's conclusionary premise cannot be accepted, that its sole authorized or actual business was manufacturing and selling equipment; or therefore the further one that no other activity on its behalf could constitute doing or engaging in business. Indeed it was authorized to take out, hold and exploit television patents, and doing this was certainly as much part of its business as manufacturing and selling the equipment they covered.

²⁴ The catalogue emphasizes things not being done as of the dates of service, e. g., maintaining an office, warehouse or place of business; owning realty or other physical property; keeping a staff of employees; having agents "other than counsel in this case and . . . Elcock"; keeping a telephone or a listing; making sales; conducting research; soliciting orders. Correspondingly appellee atomizes the things then being done into separate, disconnected events, viz., stock ownership (in American Scophony); contracting with American Scophony and the other corporations for transfer and licensing of patents; activities to protect Scophony's American "interests" by resolving the impasse.

There is nothing to show that Scophony was restricted by its charter or otherwise to exploiting its patents exclusively by direct manufacture and sale. When therefore, after that method had failed, the company chose another, it was not ceasing to do business. That consequence did not follow merely because it discontinued the activities incident to continuing the discarded method.

The alternative one chosen was not a matter simply of licensing patents to others, for active exploitation by them. Nor was it only a casual act or acts of contracting. The whole framework of this phase of the New York activities was dictated by the master and supplemental agreements. These were not mere licensing arrangements, nor did they make Scophony nothing more than a shareholder for investment purposes, with only such a shareholder's voting rights and control in American Scophony. The contracts created controls in Scophony, and in the American interests as well, which taken in conjunction with the stock controls called for continuing exercise of supervision over and intervention in American Scophony's affairs.²⁵ We need not decide whether, in view of the agreements' continuing and pervasive effects, they could be considered as sufficing in themselves to make Scophony "found" within the New York district.²⁶

²⁵ See note 22 *supra*. Indeed the contracts shaped the nature of the corporate distribution of powers and voting rights, so as to make them conform to the over-all character and objects of the larger common enterprise. The charter and by-law provisions of American Scophony therefore not only were governed by the contractual arrangements but carried them into execution.

²⁶ Especially in view of the fact that § 12 fixes venue and the places for serving process in antitrust suits, there would seem to be sound basis for differentiating the execution of agreements so all-pervasive and far-reaching in their effects upon the statutory policies from run-of-mine casual or intermittent sales of commodities by a manufacturing or selling company, for the section's purposes.

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Whether so or not, they set the pattern for a regular and continuing program of patent exploitation requiring, as we have said, Scophony's constant supervision and intervention.

That necessity was shown, among other ways, by the contractual provisions for interchange of data and information, and further by the fact that there was sustained interchange of correspondence between Levey and Scophony devoted to Scophony's affairs and interests in this country. Levey kept Scophony informed fully of all that went on here, and in turn received and carried out its instructions respecting American Scophony's affairs and its own.

In all this he was not acting merely as an officer of American Scophony. Rather he was also Scophony's director and representative, authorized to act in its behalf and interest. Indeed it was as Scophony's representative that he was named as president of American Scophony. His position was a dual one. He was not a mere shareholder's or investor's agent seeking information about that corporation's affairs for purposes of dealing with the stock. His functions and activities were much broader and related to Scophony's interests as much as to American Scophony's. Scophony's New York activities therefore were not confined to negotiation and execution of the agreements. Neither were they concerned only with mere stock ownership or "investment" as is urged, nor were they simply occasional acts of contracting, like those in the decisions appellee cites.

Moreover, other individuals carried on for Scophony in continuing efforts²⁷ to resolve the impasse. Apart from what was done by others, Elcock came to New York with unrestricted and irrevocable power to act on Scophony's behalf. Indeed it might almost be said, in view

²⁷ See note 7.

of his triple position as mortgagee, corporate officer and attorney-in-fact, that for all relevant purposes at this phase of Scophony's activity, he was the company. The stalemate put Scophony's affairs in this country at a standstill along with those of American Scophony. And Scophony's efforts to extricate itself were both strenuous and continuous.

Those efforts were not cessation of engaging in business. They were directed entirely to warding off that fate. Their object was not to liquidate, it was to resuscitate the business of Scophony and, as in all previous stages, put it on a normal course again. In doing all this, Scophony was engaging in business constantly and continuously, not retiring from it or interrupting it. Cf. *Mutual Life Insurance Co. v. Spratley*, 172 U. S. 602; *Pennsylvania Lumbermen's Insurance Co. v. Meyer*, 197 U. S. 407; *St. Louis S. W. R. Co. v. Alexander*, 227 U. S. 218. The interruptions were only in particular phases of its authorized adventure, not in the continuity, intensity or totality of the adventure itself.

In sum, we have no such situation as was presented in the manufacturing and selling cases on which appellee relies. They concerned entirely different facts and enterprises. In none was there a shifting from a course of business in pursuit of one corporate object or objects, viz., manufacturing and selling, to another continuing mode of achieving a basic corporate objective, namely, the exploiting of patents by complex working arrangements partaking practically of the character of a common enterprise with others and requiring constant supervision and intervention beyond normal exercise of shareholders' rights by the participating companies' representatives *qua* such.

We know of no decision which has held or indicated that on such facts the process clause of § 12 is not adequate to confer power to make valid service. Such a

continuing and far-reaching enterprise is not to be governed in this respect by rules evolved with reference to the very different businesses and activities of manufacturing and selling. Nor, what comes to the same thing, is the determination to be made for such an enterprise by atomizing it into minute parts or events, in disregard of the actual unity and continuity of the whole course of conduct, by the process sometimes applied in borderline cases involving manufacturing and selling activities.

For present purposes those decisions may be left untouched for the facts and situations in which they have arisen and to which they have been applied. But there could be no valid object in expanding their pulverizing approach to situations as different and distinct as this one, comprehended within neither their rulings nor their effects. More especially would such an extension be inappropriate, when it is recalled that § 12 governs venue and service in antitrust suits against corporations. For, in cases against companies incorporated outside the United States, that extension would bring back all the obstacles to enforcement of antitrust policies and remedies which existed for domestic corporations before § 12 was enacted to give relief from those obstacles. Even though venue were clearly established, as here, the extension often would make valid service impossible, since process could not be issued to run for such corporations to the foreign countries of which they are "inhabitants." We are unwilling to construe § 12 in a manner to bring back the evils it abolished, for situations not foreclosed by prior decisions, and thus to defeat its policy together with that of the antitrust laws, so as to make another amendment necessary.

We think that Scophony not only was "transacting business" of a substantial character in the New York district at the times of service, so as to establish venue there, but also on the sum of the facts regarding its

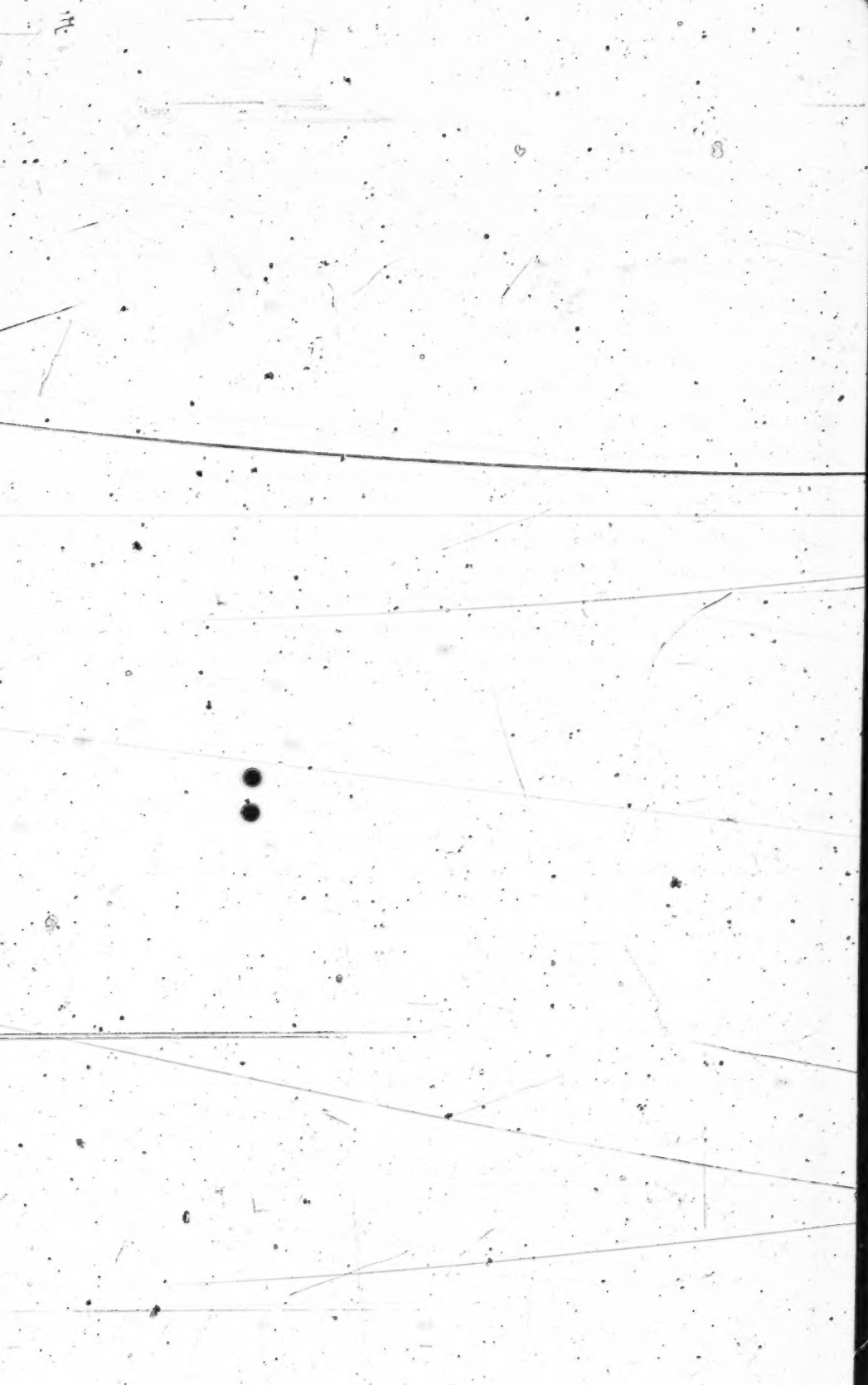
activities was "found" there within the meaning of the service-of-process clause of § 12. Of course such a ruling presents no conceivable element of offense to "traditional notions of fair play and substantial justice." See *International Shoe Co. v. Washington*, *supra*, at 316; cf. *Hutchinson v. Chase & Gilbert*, 45 F. 2d 139, 141.

It remains only to say that we do not stop to consider whether, as is argued, Levey's authority to act for Scophony had expired or been revoked at the time service was made by delivery of process to him. For when service was made by delivery to Elcock, he had unrevoked and irrevocable authority to act in Scophony's behalf in the New York district, and that service was valid to confer personal jurisdiction over Scophony.

Accordingly, the judgment is reversed and the cause is remanded to the District Court for further proceedings in conformity with this opinion.

Reversed and remanded.

MR. JUSTICE JACKSON concurs in the result.



SUPREME COURT OF THE UNITED STATES

No. 41.—OCTOBER TERM, 1947.

The United States of America,
Appellant,

v.

Scophony Corporation of America,
General Precision Equipment
Corporation, Television Produc-
tions Inc., Paramount Pictures,
Inc., Scophony Limited, et al.

Appeal from the Dis-
trict Court of the
United States for
the Southern Dis-
trict of New York.

[April 26, 1948.]

MR. JUSTICE FRANKFURTER, concurring.

I deem it appropriate to state why I concur merely in the Court's result.

The only question in this case is whether Scophony Limited, a British corporation, which has its offices and principal place of business in London, may be made a party defendant in a suit by the United States for violation of the Sherman Law pending in the Southern District of New York. The corporation may be brought into court in that District if its activities there satisfy the requirements of § 12 of the Clayton Act. According to this provision, Scophony Limited is properly a party defendant in this suit only if, by virtue of its activities, it is "found or transacts business" in the Southern District of New York, and it may be served in that District if it is "found" there.

Whether a corporation "transacts business" in a particular district is a question of fact in its ordinary untechnical meaning. The answer turns on an appraisal of the unique circumstances of a particular situation. And a corporation can be "found" anywhere, whenever

the needs of law make it appropriate to attribute location to a corporation, only if activities on its behalf that are more than episodic are carried on by its agents in a particular place. This again presents a question of fact turning on the unique circumstances of a particular situation, to be ascertained as such questions of fact are every day decided by judges.

What was done in the Southern District of New York on behalf of Scophony Limited, as detailed in the Court's opinion, establishes that the corporation was there transacting business and was found there in the only sense in which a corporation ever "transacts business" or is "found." Accordingly, Scophony Limited was amenable to suit and service in the District within the requirements of § 12 of the Clayton Act.

To reach this result, however, I do not find it necessary to open up difficult and subtle problems regarding the law's attitude toward corporations. I abstain from joining the Court's opinion not because I am in disagreement with what is said but because I am not prepared to agree. And I am not prepared to agree because I do not wish to forecast, which agreement would entail, the bearing of the Court's discussion upon situations not now before us but as to which such theoretical discussion is bound to be influential. Law, no doubt, is concerned with "practical and substantial rights, not to maintain theories." *Davis v. Mills*, 194 U. S. 451, 457. But theories often determine rights. Since I do not know where the opinion in this case will take me in the future, I prefer to reach its destination by the much shorter route of recognizing that a corporation as such never transacts business and is never found anywhere, but does "transact business" and is "found" somewhere by attribution to the corporation of what human beings do for it. No doubt legal reasoning must be on its guard not to oversimplify. Dangers also lurk in overcomplicating.

From earliest times the law has enforced rights and exacted liabilities by utilizing a corporate concept—by recognizing, that is, juristic persons other than human beings. The theories by which this mode of legal operation has developed, has been justified, qualified, and defined are the subject-matter of a very sizable library. The historic roots of a particular society, economic pressures, philosophic notions, all have had their share in the law's response to the ways of men in carrying on their affairs through what is now the familiar device of the corporation. Law has also responded to religious needs in recognizing juristic persons other than human beings. Thus, in the Hindu law an idol has standing in court to enforce its rights. See, e. g., *Pramatha Nath Mullick v. Pradyumna Kumār Mullick*, 52 L. R. I. A. 245 (1925). Attribution of legal rights and duties to a juristic person other than man is necessarily a metaphorical process. And none the worse for it. No doubt, "metaphors in law are to be narrowly watched," Cardozo, J., in *Berkey v. Third Avenue R. Co.*, 244 N. Y. 84, 94. But all instruments of thought should be narrowly watched lest they be abused and fail in their service to reason.